IN THE SUPREME COURT OF THE STATE OF NEVADA

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CLA PROPERTIES LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, Appellant, vs. SHAWN BIDSAL, AN INDIVIDUAL, Respondent.	**No. 86438**
CLA PROPERTIES LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, Appellant, vs. SHAWN BIDSAL, AN INDIVIDUAL, Respondent.	**No. 86817**

APPELLANT'S APPENDIX

VOLUME 39

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CHRONOLOGICAL INDEX TO APPELLANT'S APPENDIX

What did Judge Wall say, and, Your Honor, you hit it on the head. In fact, I had the same pages of Judge Wall's underlined as you quoted to. He found that there was no breach. Neither side breached, that what they did is they -- all of the dispute resolution provision of the operating agreement, which they were allowed to do and which was consistent with the terms of the contract between them to resolve the dispute. There was no breach.

At the end of the day, Mr. Kennedy stated, Your Honor, I read it differently. That's how he said it. I read it differently. Reading something differently is not the standard.

At the end of the day, there's a very high burden. Nevada law is clear. Quote -- this is *Ellis v. Nelson*, 68 Nevada 410:

> Quote, "A cash sale is generally regarded as one in which neither title nor possession is to be delivered until payment in full has been made," end quote.

That is supported by numerous other legal citations set forth in the briefing. They have the burden of demonstrating that Judge Wall's award is completely irrational or that it exhibits a manifest disregard for the law.

The reality is Judge Wall's ultimate award is a hundred percent consistent with Judge Haberfeld's award. It's

consistent with Your Honor's order confirming it. It's consistent with the Nevada Supreme Court's decision, and it should be not -- it should be confirmed. I was going to say upheld, but the word is confirmed.

We are asking the Court to enter an order confirming the award. Not a judgment, you're right. We double checked the Nevada law. We're asking Your Honor to enter an order.

THE COURT: Amazing. You're saying a Judge is right? Wow. I'll have to keep that --

MR. SHAPIRO: Do you want me to say that again?

(Multiple parties talking, indiscernible speech.)

MR. SHAPIRO: Your Honor, you're right.

And we are asking that you confirm the arbitration award because they have not demonstrated under the very high standard.

THE COURT: I need confirmation from the parties because once again you all have both argued both under the federal and the state. Is it both parties' contention that regardless if the Court analyzed it under 9 USC Section 10 or NRS 38.241 that the outcome is the same, or is somebody going to contend that I should be analyzing it one way versus the other?

MR. KENNEDY: For movant, Your Honor, we believe the outcome is the same under either standard.

MR. SHAPIRO: And, as the respondent, we agree. The

outcome is the same.

THE COURT: Okay. (Indiscernible) from last time. Okay. So let's go to -- okay.

First off, the idea of there being a partial request to vacate is properly before the Court, *Comedy Club versus Improv Associates* at 553 F.3d 1277, Ninth Circuit (2009), and, yes, the statutory grounds for vacating an arbitration award, well, you used the federal standard where the arbitrators exceeded their powers, 9 U.S.C. Section 10 or where an arbitrator exceeded his or her powers, NRS 38.241. And then each of them provide various excesses for their definitions, but since the parties do agree that regardless of which way the Court analyzes it, under the federal or the state standard, the outcome is the same. The Court is just going to go through that.

So regardless if you look completely irrational or exhibits a manifest disregard of the law that should have been the word, manifest disregard of the law, not regard, Kyocera, K-y-o-c-e-r-a, Corp. versus Prudential-Bache, 341 F.3d 987, Ninth Circuit 2003, and then, of course, the State says, Review is not limited to the statutory grounds in NRS, in 38.241 under *Graber versus Comstock*, 111 Nevada 1421 (1995). So also looks at the common law again, grounds.

So here's now where we need to go.

We need to go did Judge Wall in his role as an

arbitrator meet the standards in which the Court should vacate the arbitration award. The Court finds he did not. Reviewing the papers and pleadings on file, all two and a half boxes of them as well as the extensive oral argument, everything in the record in this case, when you look at it, really the Court finds that the countermotion to affirm or confirm the arbitration award as an order is appropriate, and the Court needs to deny the motion to partially vacate the arbitration award.

Realistically, it comes down to a couple of different things. You have to go back to what was the underlying aspect? While I appreciate the excellent oral argument and you all's viewpoints on when things transfer and don't transfer, whether it's 2017 or some other date, here's what you have to look at.

The arbitrator, Judge Wall in this case, did specifically set forth that some of the issues with regards to tender, et cetera, were outside his scope. Those needed to be brought here. So what he was looking at is the issue specifically before him. And whether you phrased the term effective date or whether you phrased the term is does it apply back when the initial purchase -- purchasing -- how would you phrase that, I will -- one second. The letter putting into play the triggering of the membership interest under 4.2, that first date is 2017 or some other date, realistically, you have to look at what was the underlying arbitration award and what

was the underlying agreement between the parties.

So when you look at that, you go to the underlying arbitration award, and realistically, this Court takes note that the reference to page 11 of Judge Haberfeld's acting in the arbitrator roles decision was under the section specifically titled, quote, core, end quote, arbitration issue that started on page 4 and then goes to paragraph C that was on page 11.

Paragraph C on page 11, which is a subpart of paragraph 20, which started on page 10, paragraph 20 started with, Significant among other factors adduced at the hearing and postevidentiary subject (indiscernible), okay. So then he looks at all of that.

Then the Section C, for which it was referenced about the September 3rd, 2017, date says,

> C, There was no contractual residual protection available to Mr. Bidsal as to an appraisal and/or price of his membership interest -- which under Section 4.2 upon Mr. Bidsal's "triggering," of the same became, "the membership interest," which Mr. Bidsal put in play.
>
> Put another way -- although CLA put up about 70 percent of Green Valley's capital -- CLA and Mr. Bidsal by agreement each had a

50 percent membership interest in the Green Valley, LLC -- so that at the point CLA had the election under the "buy sell," whether to buy or sell, quote, the 50 percent, the -- sorry, quote, the, end quote -- there's no quotes around 50 percent -- membership interest in Green Valley put in play by Mr. Bidsal.

If CLA elected to buy rather than sell, CLA had the contractual option to compel Mr. Bidsal to sell his 50 percent membership interest to CLA at a purchase price computed via the Section 4.2 formula based on either Mr. Bidsal's 5 million valuation of the LLC in his July 7, 2017, Section 4.2 offer, if CLA elected to sell rather than buy, CLA had the election to have the purchase price via formula set in accordance with Mr. Bidsal's offering valuation of 5 million or a, paren, presumed greater, end of paren, valuation set via contractual third-party appraisal, also under Section 4.2 and Mr. Golshani got an appraisal or valuation for purposes of sale, its 50 percent membership interest to Mr. Bidsal would be more favorable to CLA. Thus, Mr. Bidsal had no right to demand an appraisal and under Section 4.2, Mr. Bidsal

was obligated to close escrow and sell his 50 percent membership interest to CLA within 30 days after CLA elected to buy, i.e., by September 3, 2017.

That paragraph is discussing specifically the appraisal provision and the backgrounds with regards to that appraisal provision and whether or not that applied. The Court doesn't see that that is an affirmative ruling that the date by which any damages calculation would be, would be the September 3rd, 2017.

In fact, in the relief granted and denied section, while there are six paragraphs therein, right, paragraph 1 does specifically state,

> Within 10, (10), days of the issuance of this final award, respondent Sharim Bidsal, also known as Shawn Bidsal, ("Mr Bidsal"), shall, (A), transfer his 50 percent, (50 percent), membership interest in Green Valley Commerce, LLC, ("Green Valley"), free and clear of all liens and encumbrances to claim that CLA Properties, LLC, at a price computed in accordance with the contractual formula set forth in 4.2 of the Green Valley operating agreement with the "FMV" -- that's all caps -- portion of the formula fixed as $5 million and

no cents, paren, and then the numeric writing out of $5 million, end of paren;

And further (B), execute any and all documents necessary to effectuate such sale and transfer. And then Mr.-- paragraph 3. Paragraph 2, Mr. Bidsal should take nothing by his counterclaim.

So what you looked there as well is what actually is the relief granted? It is prospective that it needs to be done within those 10 days, and then there you also do not have the price actually computed.

It says you need to compute a price of 4.2. If it was the intention of Judge Haberfeld to have this done at the 2017 price and that formula had already been done and calculated, really, this Court has to view that it would have been in the award, and that's what this Court affirmed and the Nevada Supreme Court affirmed and then denied rehearing on. It was not making any specific date back in 2017.

So then you go to -- so that's all consistent.

And then you go to the actual award. One second. Let me get to pages -- the second arbitration in front of retired Judge Wall, slash, Arbitrator Wall, that one was GM's reference (126)000-5736, final award; right? That final award, and then we are going to that final award, which was attached to the initial motion to vacate after (indiscernible) the case

was opened and attached elsewhere.

So one second.

UNIDENTIFIED SPEAKER: I think it's page 22, Your Honor.

THE COURT: So the analysis with regards to distributions starts about page -- okay. Various buildings that were sold and pages 10 through -- all the pages goes through, and it talks about the language of Exhibit B regarding the preferred allocations and the other allegations that then you go to everything from 2017 on because that was 2012 to 2017.

So then we go to -- he quotes the correct ambiguous contractual provisions and that the arbitrator can do that fairly and reasonably, and he cites to Mohr Park Manor, that's M-o-h-r, Park Manor, 83 Nevada. He cites it as 111 and (indiscernible) and contracts as well.

Okay. So then paragraph D, starting on page 22 talks about effective date of sale. An effective date of sale is not any term of art in a contract as the parties agree. It's a term that came up during this second arbitration. It wasn't utilized previously because the issue of 2017, your other date was not provided that's shown in Haberfeld's to show that that was a date by which the triggering of any damages, et cetera, would have happened nor to this Court, nor to the Supreme Court as set forth in the various orders of each of those entities.

So effective date of sale. So it says in addition to the purchase price under formula in Section 4.2 of '08 is necessary to determine effective date of the sale of Bidsal's interest to GVC. Respondent avers that the effective date is September 2017; the time when respondent contends his counteroffer transaction should have been consummated.

And then his finding is this contention is without merit. It says the transaction has never been completed. Judge Haberfeld in his award in April of 2019 directed that the transaction take place forthwith. He did not find an effective date in a transaction to have occurred a year earlier:

> The OA provides for a procedure of completing the sale of the membership interest which procedure has not yet been completed. Claimant has continued to act as a member (and manager,) of GVC since September of 2017, and respondent cannot divest plaintiff of his membership interest because he has not yet paid him for his interest pursuant to the OA.
>
> Bidsal has appropriately received distributions since 2017, and since he remains a member of GVC, he cannot be required to divest himself of those distributions. He's also been treated as a member of GVC for tax purposes since 2017 and paid taxes on a distribution that

respondent now seeks to claw back.

Additionally, treating the sale was having an effective date of 2017 would require respondent to compensate Bidsal for services of property manager over the past four years, period.

It is a determination of the arbitrator based upon all the relevant evidence in this manner that the effective date of the purchase of Bidsal's interest has not yet come to pass. Pursuant to Judge Haberfeld's final award, the transfer is to take place 10 days to the effective issuance thereof. As that award, paren, through Judge Kishner's denial of Bidsal's motion to vacate an order confirming award, end of paren, has been stayed pending appeal to the Nevada Supreme Court.

The enforcement of Judge Haberfeld's award requiring the sales effectively postponed. The instant award is essentially declaratory in nature. Should the stay be lifted, Judge Haberfeld's award directing that the sale take place becomes effective and the instant final award has now used a reasonable interpretation of the formula in Section 4.2 to arrive at

purchase price, and it has Footnote 13, and Footnote 13 says, this now presumes, of course, that Judge Kishner's order confirming the award is upheld by the appellate court. This presumption is not based on any considerations of the merit of such appeal, but any other presumptions effectively makes this award moot, okay.

So then it goes into the page at the top of 24 in closing argument, counsel for claimant has requested interest be awarded from September of 2017 forward on the purchase price. Argument that Bidsal has lost the right to use those funds over the last four years and of the CLA's failure to perform.

This is the determination of the arbitrator that Bidsal is not entitled to recover interest on funds he wouldn't have -- he would have received for a transaction which has not yet occurred. Judge Haberfeld did not rule the respondents improperly utilize the arbitration provision in the OA to determine that Bidsal must sell his interest in GVC.

Similarly, the undersigned arbitrator does not find that Bidsal inappropriately utilized the arbitration provision in the OA to institute this proceeding to arrive at a purchase price and effective date of sale. Notably claims forensic accountant Will Cox (phonetic) also testified on this issue.

I'm not going into each of the experts and what they testified, and so, realistically, you look at that, that's a -- that does not meet the standards of either state or federal law of exceeding the authority showing it is not -- well, nobody is saying that there's partiality. So I don't have to go into that one.

There was nothing for corruption, fraud. I'm doing the citation under 38.241. It's also, so, realistically saying whether or not they exceeded his or her powers, right, and the parallel language used in the federal analysis.

What the arbitrator did is the Court doesn't substitute his judgment and finds that does it meet those standards? No. It is a well-reasoned explanation.

Looking at opinions by the underlying arbitrator, Judge, in the first arbitration and whether or not that issue is directly attended, finding that the process of using a dispute resolution process, which he phrases as utilizing the arbitration provision of the OA to institute the proceeding finds that that was not an abusive use of that. They could utilize that. He did not, in his words, Judge Haberfeld did not rule that respondents inappropriately utilized the arbitration provision to determine that Bidsal must sell his interest in GVC.

So you have to look at the fact that he utilized the arbitration provision of the operating agreement, and so

therefore, based on utilizing that provision, there had to be determinations of the dispute resolution provision that was made by Judge Haberfeld acting as the arbitrator in the first, affirmed by this Court, affirmed by the Supreme Court of those rulings, and in so doing found that it needed to take place once you had a formula.

While the Court is appreciative that one side -- that CLA contends well, the formula really was always there and nobody thought that really would be an issue, well, it's in Judge Haberfeld's that you still need to have a formula. So it can't be retroactive back to 2017 because it still needs to have a formula. And realistically, if the parties thought that the formula was so clean and clear, it could have been part of the arbitration as part of -- brought up as an issue in that first arbitration of what is the formula. I'm not saying people should or should not have, but it has a prospective component in 10 days, and you need to utilize the formula.

And then there was the issue of what was the formula and how to do that formula based on everything that had taken place.

So when you look at the totality of everything and you look at the analysis provided and you look at the case law that was provided, you look at the reliance by Judge Wall and Judge Haberfeld, Judge Kishner and the Nevada Supreme Court, really the Court cannot find that the standards for vacating

the award, either under 9 USC or NRS 38.241 have been met.

So therefore the Court needs to deny the motion to vacate the arbitration award in part, which was Document 1, and the Court by looking at, since the only portion or part of that that was challenged, the Court in looking at the countermotion just sees that it needs to affirm, slash, confirm both that language has been used, the order on that arbitration award. It is so ordered.

The Court is going to ask counsel for Bidsal to prepare the order with all the appropriate findings and submit it to the opposing party.

Do all need more than the 14 days under EDCR 7.21, or is that going to meet your needs?

MR. SHAPIRO: I think it makes sense to go -- if we could get maybe 28 days just so that we're not having issues.

MR. GARFINKEL: Your Honor, we may want to order a transcript so we can take a look at your findings. We know you've been rushed. It might make sense to get a transcript.

THE COURT: Oh, I have not been rushed. You all have had two hours --

MR. GARFINKEL: Well, no, Your Honor --

THE COURT: -- two plus hours; I'm not rushed.

MR. GARFINKEL: No, Your Honor. I mean -- I know you wanted to get out of here for lunch, but I'm just saying it may make sense if we can get the transcript.

THE COURT: Do you not think that I gave a full analysis in my reasoning? I'll be glad to go back over it.

MR. KENNEDY: No, not at all, Your Honor. Not at all. It was just very quick.

THE COURT: Okay. What I'm saying is I've said what I need to say.

MR. GARFINKEL: Of course.

THE COURT: Okay. I am not -- I do not feel that I've been rushed. I think I -- you all gave me two and a half boxes of documents. A lot of what I said is, right, the same standard as when it came the first time, right, both state and federal law. I gave you the same result. Case law gives you the same result.

Realistically, you asked this Court to see is, is this one side's interpretation in disagreeing with the arbitrator or did the arbitrator meet the standards under state or federal law to vacate the award or should it be confirmed, slash, affirmed. So realistically I've tried to give you an analysis that set forth the reasonings behind citing to the documents, citing to the underlying orders and giving you all of that.

If you want to order a transcript, of course you can, but does that mean you want 28 days, or do you want something more?

MR. SHAPIRO: I think 28 days is good.

MR. KENNEDY: It's fine, Your Honor.

MR. SHAPIRO: And I think Mr. Garfinkel was simply saying that neither he nor I are that fast at writing, and we'd like the transcript so can follow along.

MR. GARFINKEL: Yes. Yes, Your Honor.

THE COURT: Oh, no worries. But if somebody had a question on a clarification I'd be glad to do so.

MR. KENNEDY: It's not that I didn't understand what you were saying it's just my hands and my brain don't write as fast.

THE COURT: Okay. Does anyone need any clarification?

MR. SHAPIRO: Well, the one clarification I would ask is at the end you said that I was to prepare the order for the proposed findings and flesh that out. My understanding is that would -- that I can put in the arguments consistent with Your Honor's rulings that were in our pleadings. Is that a correct understanding?

THE COURT: The legal support is based -- the Court's ruling, of course, is based on the legal support.

MR. KENNEDY: Right.

MR. SHAPIRO: Right.

THE COURT: And the ruling is, of course, based on the factual findings that I stated and the various things that I quoted.

So I'm not sure if you're saying that there's an additional legal argument that I did not specifically address in my ruling which you're asking to put in. You're going to -- I look at them to see if they were consistent with my rulings.

MR. SHAPIRO: Got it. Okay.

THE COURT: So if somebody adds in new things, right, now whether it's new or whether it was incorporated by when I was referencing certain provisions in certain cases, and, like, cite the whole rest of the case and its parallel pin cite, right, well, of course, yeah, parallel pin cite, put them in, please.

To the extent that there's an issue, the process is as follows: This Court does not encourage in any manner and actually does discourage competing orders because they're not allowed under the rules, but I'm also a realist, and I'm also a realist with regards to complex issues even though you blatantly asked for business court in this one.

In any event, that being said, if there's going to be a disagreement that the party who was supposed to submit the order needs to submit the order, and you need to put on the line for the other side's counsel, right, will be submitting competing order. That competing order needs to get to me like within 48 hours of this first order. So you need to tell them when you're submitting at, right.

That competing order needs to have a two-pronged

process. One, submit it to the order inbox with your blank line. This is the competing order, right, we're competing orders so that we're clear because if people just put, did not approve, this Court doesn't know if somebody is thinking they're doing a competing order or they just didn't approve it, and I'm just supposed to evaluate what I've got, okay. Now, we ask people to put on the line competing order. That's in no way encouraging competing orders or even saying that they're allowed in the rules.

That being said, if there is going to be a competing order, then in addition, the party who's doing the second order needs to provide in redline its differences, right, and indicate like if one's blue and one's red and that goes to my JEA, Tracy Cordova, which you know her e-mail well, cc to the other side, and it cannot include any argument or any reason why there's a difference in the two. It's just really for our ease because if sometimes it's very difficult to determine exactly what is the differences, right.

So we ask if somebody wants to do a competing order, they get the extra burden of -- it's not a burden, right, the extra aspect of punching the little thing to do it redline, and you all know redline compare, right. I'm talking about the same thing.

MR. KENNEDY: Yes.

THE COURT: But I just need to know which one is

which person's right, okay.

MR. GARFINKEL: Thank you, Judge.

MR. KENNEDY: Thanks, Judge.

MR. SHAPIRO: Thank you.

THE COURT: Thank you so very much. Have a good one.

(Proceedings concluded at 12:27 p.m.)

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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Dana L. Williams
Transcriber

EXHIBIT 2

EXHIBIT 2

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JAMS

BIDSAL, SHAWN, Claimant, v. CLA PROPERTIES, LLC, Respondents.	Ref. No. 1260005736 **FINAL AWARD**[1]

This matter was presented for Arbitration and a Hearing conducted on March 17-19, 2021, April 26-27, 2021 and September 29, 2021, at the offices of JAMS in Las Vegas before Arbitrator David T. Wall.[2] Claimant appeared personally and with James E. Shapiro, Esq. and Douglas D. Gerrard, Esq. Respondent appeared through representative Benjamin Golshani, with counsel Rodney T. Lewin, Esq, and Louis E. Garfinkel, Esq.

At the Hearing, both Bidsal and Golshani provided testimony.[3] Claimant also called forensic accountant Chris Wilcox and Respondent called forensic accountant Dan Gerety, Jeff Chain and Kasandra Schindler. Excerpts of testimony from the deposition of Jim Main were read

[1] On October 27, 2021, the undersigned Arbitrator issued an Interim Award. Sections I through IV of the Interim Award are reproduced here materially unchanged. The Interim Award included a briefing schedule for an application for an award of attorneys' fees and costs, which is addressed in section V herein.
[2] Closing arguments were conducted on September 29, 2021, via the Zoom videoconference platform.
[3] The totality of the witnesses' testimony is not restated herein. Included are material elements of testimony germane to the Arbitrator's Award.

into the record after designations and cross-designations by counsel. The following exhibits were admitted during the Arbitration Hearing: Joint Exhibits 1-34, 35-39, 43, 50, 52, 56-58, 67, 84, 85, 87, 91, 95, 97, 108, 111, 112, 114, 118,123, 125,136, 137, 139 153, 164-166, 180, 184, 188 (for a limited purpose)-193, portions of 198, 200-202 and 206.[4]

I. Factual Background

Claimant Shawn Bidsal (hereinafter "Bidsal" or "Claimant") and his first cousin, Benjamin Golshani ("Golshani"), formed a joint venture in 2010 called Green Valley Commerce, LLC ("GVC"). Golshani's interest was held entirely by Respondent CLA Properties, LLC ("Respondent" or "CLA"), for which Golshani is the sole member and manager.

Prior to the formation of the joint venture, Claimant was the successful bidder on a note for which the borrower was in default. The note was secured by a Deed of Trust against two parcels of commercial property with eight buildings and a parking lot thereupon. Shortly after Claimant successfully bid on the note, the joint venture between Claimant and Respondent was formed. According to the Operating Agreement for GVC ("OA"), Claimant contributed $1,215,000 toward the purchase price of the note. Golshani contributed $2,834,250 and directed that his interest be held by CLA. Although Claimant provided approximately 30% of the initial capital contribution and Respondent provided approximately 70%, the parties agreed that each member's interest in the joint venture would be 50%. This discrepancy was the result of Claimant's relinquishment of the discovery of the GVC opportunity, combined with Claimant's expertise in managing commercial properties (Golshani had little such experience). Claimant also was chosen to be the day-to-day manager of the properties, although the OA identified both parties as managers.

[4] A corrected version of Exhibit 200 was submitted by Respondent with leave of the Arbitrator on September 29, 2021.

Within several months of the acquisition of the note, Claimant on behalf of GVC negotiated a Deed in Lieu of Foreclosure Agreement with the defaulting borrower. As a result, GVC forgave principal and interest due on the note but received fee simple title in the collateral (the GVC commercial properties). Within this transaction, the borrower also relinquished approximately $295,000 in collected rents from the properties, plus approximately $74,000 in security deposits also being held by the borrower.

At a point in time thereafter, the parties agreed to divide each of the eight commercial buildings into its own parcel, with an additional identified parcel for the joint parking area for the buildings. Each of these parcels was given its own parcel number. By agreement, the parties engaged the services of a vendor in 2013 to provide a Cost Segregation Report that placed a value (or cost basis) for each of the eight individual parcels with buildings on them. The parties agreed that subdividing the entire property in this manner increased the overall value of the properties, such that any of the parcels could be sold individually.

Although the joint venture originated in June of 2011, the OA, which was the subject of significant negotiations between the parties, was not executed until December of 2011.

During the years that followed, three of the eight buildings were sold by GVC. In 2012, the parcel identified as Building C was sold for approximately $1,025,000, resulting in net proceeds of approximately $899,000. By agreement of the parties, the proceeds were immediately deposited with a §1031 exchange accommodator, and in 2013 the exchange was completed with the purchase of a property in Phoenix, Arizona (the "Greenway" property). All but approximately $95,000 of the proceeds of the sale of Building C were used for the purchase of the Greenway property.

In 2014, Building E was sold for approximately $850,000, and in 2015 Building B was sold for approximately $617,760. The proceeds for all three sales (other than the funds used in the §1031 exchange for purchase of the Greenway property) were distributed to Claimant and Respondent as described in more detail below.

The OA contained a provision (Article V, Section 4) permitting one member to initiate a purchase or sale of that member's interest in GVC by the other. The substance of this "buy-sell" provision allowed for one of the members to offer to buy out the interest of the other member based on an offered fair market value of GVC, which would then be inserted into a mathematical formula set forth in the OA to subsequently arrive at a final purchase price. Under the OA, the member making the offer is referred to as the "Offering Member" and the one receiving the offer is referred to as the "Remaining Member." Once the offer is made by the Offering Member, the Remaining Member has the option to: 1) sell his interest using the fair market valuation in the offer, as applied to the formula in the OA; 2) buy the Offering Member's interest using that same fair market valuation and inserting it into the formula in the OA; or 3) demand an independent appraisal to arrive at a fair market valuation, to be used in the formula in the OA. The final paragraph of Section 4.2 of the OA regarding this buy-sell provision states as follows:

> The specific intent of this provision is that once the Offering Member presented his or its offer to the Remaining Members, then the Remaining Members shall either sell or buy at the same offered price (or FMV if appraisal is invoked) and according to the procedure set forth in Section 4. In the case that the Remaining Member(s) decide to purchase, then Offering Member shall be obligated to sell his or its Member Interests to the Remaining Member.

OA, Article V, Section 4.2.

The formula to be used for calculating the purchase price, pursuant to Section 4.2, is the following:

> (FMV – COP) x 0.5 + capital contribution of the Offering Member(s) at the time of purchasing the property minus prorated liabilities.

Id. "FMV" is defined in the OA as "fair market value" as specified in Section 4.2, and "COP" is defined as "cost of purchase" as specified in the escrow closing statement at the time of purchase of each property owned by GVC.

On July 7, 2017, Claimant sent a written offer to Respondent to buy Respondent's 50 percent interest in GVC, using a fair market value (to be inserted into the formula set forth above) of $5,000,000. Using the buy-sell provision referred to above, Respondent on August 3, 2017, elected to buy Claimant's 50 percent interest (rather than sell his own interest) using Claimant's $5,000,000 fair market valuation. On August 5, 2017, Claimant sent notice to Respondent that he was invoking a right under the OA to establish fair market value (for purposes of the formula in the OA) by independent appraisal. On August 28, 2017, CLA responded with a letter suggesting its readiness to close escrow to purchase Bidsal's membership interest.

Thereafter, CLA initiated JAMS Arbitration No. 1260004569 before the Hon. Stephen E. Haberfeld, Ret., to force Bidsal to comply with the buy-sell provision in Section 4 of the OA and sell his membership interest to CLA. Judge Haberfeld determined, in a final award dated April 5, 2019, that Bidsal must sell his membership interest in GVC to CLA under the formula set forth in the OA, using Bidsal's originally offered $5,000,000 as the FMV component. Following the denial of a Motion to Vacate Judge Haberfeld's Award in December of 2019, Bidsal filed an appeal with the Nevada Supreme Court and obtained a stay of the Order to sell his interest in GVC to CLA.

While the appeal was pending, Bidsal filed the instant Arbitration in February of 2020 to resolve any dispute between the parties as to the final purchase price, using the formula set forth in the OA with the FMV component already fixed by Judge Haberfeld at $5,000,000. This Award,

then, determines a final purchase price under that formula, should the Nevada Supreme Court deny Bidsal's request to vacate the prior award.[5]

II. Procedural History

This matter is in Arbitration based upon an Arbitration provision in Article III, Section 14.1 of an Operating Agreement for Green Valley Commerce, LLC, dated on or about June 15, 2011. Neither side currently challenges the arbitrability of the instant dispute.

In this proceeding, Bidsal claims that CLA has essentially forfeited the right to purchase Claimant's interest in GVC based upon a failure to tender payment to Bidsal. The parties tacitly agree that among the issues presented in this proceeding is a calculation of the purchase price of Bidsal's membership interest in GVC, using the formula provided for in the OA with the fair market value component fixed at $5,000,000 based on Judge Haberfeld's Award. Additionally, Respondent alleges that Claimant has, while managing the properties, made distributions to himself in excess of that to which he is entitled. Also at issue is the effective date of any purchase of Claimant's interest in GVC, which begets additional issues to be determined (potential interest to be awarded, Claimant's entitlement to management fees, the propriety of and accounting for any distributions made to Claimant after such effective date, etc.). Each of these issues are discussed below.

III. Legal Standard

Issues presented herein require the interpretation of certain sections of the Operating Agreement for Green Valley Commerce, LLC. When the facts are not in dispute, contract interpretation is a question of law. Lehrer McGovern Bovis, Inc. v. Bullock Insulation, Inc., 124

[5] The appeal remains outstanding before the Nevada Supreme Court as of the date of this Award. Both parties recognize that the determination of a final purchase price herein is conditioned upon the denial of Claimant's request to vacate the award by Judge Haberfeld, and that no sale can be consummated or finalized while the stay is in effect.

Nev. 1102, 1115 (2008). In interpreting a contract, the intent of the parties shall be effectuated, which may be determined in light of the surrounding circumstances if not clear from the contract itself. Anvui, LLC v. G.L.Dragon, LLC, 123 Nev. 212, 215 (2007). A contract is ambiguous when it is subject to more than one reasonable interpretation. Id. Parol evidence is admissible for ascertaining the true intentions and agreement of the parties when the written instrument is ambiguous. M.C. Multi-Family Development, LLC v. Crestdale Associates, Ltd., 124 Nev. 901, 913-914 (2008). It may also be introduced to show subsequent oral agreements to modify a written contract or to show the existence of a separate oral agreement as to any matter on which a written contract is silent and which is not inconsistent with its terms. Id. When there exists contradictory or inconsistent language in different portions of the contract provisions, a tribunal should endeavor to harmonize the provisions and construe them to reach a reasonable solution. Eversole v. Sunrise Villas VIII Homeowners Association, 112 Nev. 1255, 1260 (1996). As the Nevada Supreme Court stated in Mohr Park Manor, Inc. v. Mohr, 83 Nev. 107 (1967):

> In interpreting an agreement a court may not modify it or create a new or different one. A court is not a liberty to revise an agreement while professing to construe it. Reno Club, Inc. v. Young Investment Co., 64 Nev. 312, 323-324, 182 P.2d 1011, 173 A.L.R. 1145 (1947). On the other hand, a contract should be construed, if logically and legally permissible, so as to effectuate valid contractual relations, rather than in a manner which would render the agreement invalid, or render performance impossible. Reno Club, Inc. v. Young Investment Co., supra, 64 Nev. 325, 182 P.2d 1011. See also, 4 Williston, Contracts, §620 (3d Ed. 1961) wherein it stated: 'The Writing Will Be Interpreted If Possible So That It Shall Be Effective and Reasonable. An interpretation which makes the contract or agreement lawful will be preferred over one which would make it unlawful; an interpretation which renders the contract or agreement valid and its performance possible will be preferred to one which makes it void or its performance impossible or meaningless; an interpretation which makes the contract or agreement fair and reasonable will be preferred to one which leads to harsh or unreasonable results.' A court should ascertain the intention of the parties from the language employed as applied to the subject matter in view of the surrounding circumstances.

Mohr Park Manor, 83 Nev. at 111.

IV. Factual and Legal Analysis

A. Failure to tender funds

Claimant argues that Respondent's failure to tender the purchase price terminated CLA's right to purchase Bidsal's interest in GVC. Initially, Claimant argues that CLA failed to tender the purchase price in the fall of 2017 when offers and counteroffers were made. It is the determination of the Arbitrator that this issue is beyond the scope of the current Arbitration proceeding, and needed to be addressed in the original Arbitration proceeding before Judge Haberfeld. In April of 2019, Judge Haberfeld determined that Claimant must transfer his interest in GVC to Respondent. As such, it is the determination of the Arbitrator that Claimant is not entitled to relief on this issue in the current proceeding.

Next, Claimant argues that CLA's failure to tender any funds to Bidsal after Judge Haberfeld's arbitration award terminated CLA's right to purchase Bidsal's interest in GVC. Immediately following Judge Haberfeld's award, Claimant filed a Motion to Vacate the award in the Clark County District Court. That Motion was denied by Hon. Joanna Kishner in December of 2019 and Claimant immediately sought and received a stay of enforcement of Judge Haberfeld's award to take an appeal to the Nevada Supreme Court. Under these facts, it is the determination of the Arbitrator that any perceived failure of Respondent to tender was appropriate given the state of the proceedings, and is consistent with Claimant's actions in seeking to vacate the award prior to its enforcement. Respondent effectively had an order in place compelling Claimant to sell his interest in GVC to CLA, and valid tender was no longer a prerequisite to Respondent's ability to enforce the buy-sell provision. As such, it is the determination of the Arbitrator that Claimant is not entitled to relief on this issue in the current proceeding.

B. Distribution of proceeds from the sale of properties

Respondent contends that Claimant improperly distributed the proceeds from the sale of certain of the properties belonging to GVC.

Exhibit A to the OA, at section 5.1.1.1, states that "items of income, gain, loss, deduction or credit (or items thereof) shall be allocated among the members in proportion to their Percentage Interests as set forth in Exhibit B, subject to the Preferred Allocation schedule contained in Exhibit B…."

Exhibit B to OA is a single-page document showing each member's percentage interest in GVC (Bidsal and CLA each at 50%) and each member's capital contributions (Bidsal $1,215,000 for 30% and CLA $2.834.250 for 70%). Exhibit B goes on to state the following:

> PREFFERED ALLOCATION AND DISTRIBUTION SCHEDULE
> Cash distributions from capital transactions shall be distributed per the following method between the members of the LLC. Upon any refinancing event, and upon the sale of Company asset, cash is distributed according to a "Step-Down Allocation." Step-down means that, step-by-step, cash is allocated and distributed in the following descending order of priority, until no more cash remains to be allocated. The Step-Down Allocation is:
>
> > First step, payment of all current expenses and/or liabilities of the Company;
> >
> > Second step, to pay in full any outstanding loans (unless distribution is the result of a refinance) held with financial institutions or any company loans made from Manager(s) or Member(s).
> >
> > Third step, to pay each Member an amount sufficient to bring their capital accounts to zero, pro rata based upon capital contributions.
> >
> > Final step, After the Third Step above, any remaining net profits or excess cash from sale or refinance shall be distributed to the Members fifty percent (50%) to Shawn Bidsal and fifty percent (50%) to CLA Properties, LLC.
>
> Losses shall be allocated according to Capital Accounts.
>
> Cash Distributions of Profits from operations shall be allocated and distributed fifty percent (50%) to Shawn Bidsal and fifty percent (50%) to CLA Properties, LLC.

> It is the express intent of the parties that "Cash Distributions of Profits" refers to distributions generated from operations resulting in ordinary income in contrast to Cash Distributions arising from capital transactions or non-recurring events such as a sale of all or a substantial portion of the Company's assets or cash out financing.

OA, Exhibit B.

As set forth above, three of the eight buildings were sold between 2012 and 2017. Based on the language of Exhibit B, Respondent contends that these sales constituted "capital transactions" and required distribution of the sales proceeds to the Members consistent with the Preferred Allocation and Distribution Schedule, thereby necessitating distribution (as described in the Third Step) pro rata based on the Members' capital contributions (70% to CLA and 30% to Bidsal) until the capital contributions were entirely reimbursed.

Bidsal did not distribute proceeds from the three sales pursuant to the Preferred Allocation and Distribution Schedule ("PA" or "waterfall provision") set forth in Exhibit B. Based upon the language from Exhibit A, Section 5.1.1.1 (as quoted above) and the language of Exhibit B, Bidsal testified that he determined that each individual sale did not constitute a "capital transaction" as it did not involve the sale of the totality of the Company's asset. Further, he relied on the definition of Cash Distributions of Profits as set forth in Exhibit B (to be distributed 50-50) referring to a capital transaction being one of a "sale of all or a substantial portion of the Company's assets."

Instead, Bidsal distributed proceeds using a two-step approach. He testified that he used the Cost Segregation Report to determine a cost basis for each of the properties as it was sold. He testified that he allocated and distributed the sales proceeds on a 70-30 split up to the amount of the cost basis, so as to provide each Member a return of its original cash contribution for that parcel. He then split the profit (the extent to which the sales proceeds exceeded the cost basis) to the Members on a 50-50 basis.

For Building C, the cost basis in the Cost Segregation Report was $399,193.81. Building C sold for $1,025,000, with net proceeds of $898,629.23. All but $95,272.65 of those proceeds were used as part of the §1031 exchange to purchase the Greenway property in Arizona. Bidsal testified that for the $95,272.65 in remaining proceeds, he split that 70-30 between the Members since it did not exceed the cost basis amount for Building C.

Building E was sold in November of 2014 for $850,000 and Building B was sold in September of 2015 for $617,760. Bidsal testified that he used the same rationale in splitting these proceeds. For the amount of proceeds for each sale up to the cost basis for each parcel as set forth in the Cost Segregation Report, Bidsal distributed the proceeds on a 70-30 split. For the profit (the extent to which the sales proceeds exceeded the cost basis for each parcel), Bidsal distributed the proceeds on a 50-50 split.

Bidsal testified that he believed that the manner in which he distributed the proceeds from the three sales was consistent with Exhibit B of the OA and the parties' intentions throughout the life of GVC, prior to the institution of litigation in late 2017. Bidsal credibly testified that prior to distributing proceeds from each sale, he consulted with CLA principal Golshani, who agreed to Bidsal's distribution mechanism. For each sale, Bidsal provided Respondent with a detailed breakdown of the distribution of sales proceeds.[6] For each sale, the distribution breakdown was clearly noted in the tax returns for that year and itemized on each Member's Schedule K-1 form. For the sales of Buildings E and B, Bidsal provided two separate checks to each member: one comprising that member's share of the 70-30 split of the cost basis, and one comprising the member's share of the profit (split at 50-50).[7] The evidence clearly shows that Respondent was

[6] Golshani testified that he had no disagreement with the cost basis amounts attributed to each parcel in the Cost Segregation Report.

[7] Only one check was given to each member after the sale of Building C, since the remaining proceeds did not exceed the cost basis.

aware of the process used by Bidsal to calculate these distributions and approved the allocations and distributions based on Bidsal's interpretation of the language in Exhibit B.

Aside from the proceeds from the parcel sales referenced above, Bidsal testified that all other distributions of profits from the building leases was distributed on a 50-50 basis, pursuant to Exhibits A and B to the Operating Agreement. These distributions provided each member with more than $2 million dollars between 2011 and 2019.

Respondent contends that the OA required Bidsal to distribute all of the sales proceeds on a 70-30 basis until all of the capital contributions of the parties were recouped. This position is belied by the OA and the evidence presented in this proceeding.

Both parties agree, and have argued in this proceeding, that the OA is ambiguous and not well drafted. As set forth above, an interpretation of the relevant provisions of the OA requires the Arbitrator to determine the intent of the parties at the time of the execution of the agreement, Anvui, supra, to harmonize the inconsistent or ambiguous provisions to reach a reasonable solution consistent with the parties' intentions. Eversole, supra, Mohr Park Manor, supra.

The evidence strongly establishes that at the time of the formation of GVC and the execution of the OA, the objective of GVC was to split all income earned from the entity on a 50-50 basis, with each member being reimbursed for their capital contribution if the company asset was sold at some point in the future. At the time of the formation GVC, the plan was not to subdivide and sell off parcels of real property. This objective is noted in the OA, which states that the business of the company was to acquire secure debt, convert it to fee simple title and then manage the property. See, OA, Art. 1, Sec 01.[8] The formula for calculating the purchase price of a member's interest, discussed in more detail below, is designed to allow the selling member to

[8] The Operating Agreement is littered with errors in the numbering of sections and provisions. Nonetheless, provisions are identified in this Award using the section numbers in the actual OA.

recoup his capital contribution while receiving 50% of the appreciation of the fair market value of the entity. See, OA, Art. 5, Sec. 4.2. The OA further sets forth that "items of income, gain, loss, deduction or credit (or items thereof) shall be allocated among the members in proportion to their Percentage Interests as set forth in ***Exhibit "B"***, subject to the Preferred Allocation schedule contained in ***Exhibit "B"***…." See, OA, Exhibit A, Section 5.1.1.1 (emphasis in original). Exhibit B to the OA states that the Percentage Interests of each member are 50-50, and further states that profits from operations shall be allocated and distributed fifty percent (50%) to Shawn Bidsal and fifty percent (50%) to CLA. See, OA, Exhibit B.

It is clear that the intention of the parties was to allocate gains on a 50-50 basis unless and until the Preferred Allocation language in Exhibit B of the OA was triggered. The evidence establishes that this was fundamental to the formation of the entity.

Both parties agree that the language of Exhibit B to the OA regarding the Preferred Allocation is ambiguous, and both parties ask the Arbitrator to interpret these provisions to effectuate the intent of the parties. Ambiguity is evident from the relevant language of the Preferred Allocation provision. Initially, it states as follows:

> PREFFERED ALLOCATION AND DISTRIBUTION SCHEDULE
> Cash distributions from capital transactions shall be distributed per the following method between the members of the LLC. Upon any refinancing event, and upon the sale of Company asset, cash is distributed according to a "Step-Down Allocation."

OA, Exhibit B.

As set forth above, the OA provides that cash distributions from profits and allocations of income, gain, loss, deduction or credit are on a 50-50 basis, subject to the application of the Preferred Allocation for capital transactions which would result in a 70-30 allocation. However, "capital transactions" is not defined anywhere in the OA. Further, the phrase "and upon the sale of Company asset" presents further ambiguity, suggesting that a sale of the single asset of GVC

might be necessary to trigger the Preferred Allocation. This interpretation would be consistent with the overall business model suggested above, especially in light of the fact that at the time of the first draft of Exhibit B to the OA, GVC owned a single asset (a note) and had not acquired fee simple title to the property (and had not subdivided the property).

The following provision at the end of the one-page Exhibit B to the OA creates further confusion as to the application of the Preferred Allocation:

> Cash Distributions of Profits from operations shall be allocated and distributed fifty percent (50%) to Shawn Bidsal and fifty percent (50%) to CLA Properties, LLC.
>
> > It is the express intent of the parties that "Cash Distributions of Profits" refers to distributions generated from operations resulting in ordinary income in contrast to Cash Distributions arising from capital transactions or non-recurring events such as a sale of all or a substantial portion of the Company's assets or cash out financing.

Id.

Although this provision does not expressly define "capital transactions" for purposes of triggering the Preferred Allocation, it does contrast cash "distributions from operations resulting in ordinary income" (to be distributed 50-50) from "a sale of all or a substantial portion of the Company's assets" (to be distributed 70-30 pursuant to the Preferred Allocation).

Both Bidsal and Golshani testified to their intent regarding these ambiguous provisions. Golshani testified that when he signed the OA, he was not aware that under the OA CLA and Bidsal each had 50% interests in GVC. Transcript, March 17, 2021, p. 83:9-15.[9] This testimony is not credible, in light of all of the evidence surrounding the formation of GVC and Golshani's role in negotiating terms of the OA. Later, Golshani testified that it was his understanding that profit from rent would be distributed 50-50 and any other distributions would be on a 70-30 basis until the capital contributions were returned. Transcript, April 26, 2021, p. 1050:15-21. Bidsal

[9] The parties provided a court reporter for the proceedings, and each party at times has cited from the transcript during the course of these proceedings. Therefore, when necessary, the Arbitrator will also cite to the transcript.

testified that it was his intent (and his agreement with Golshani for CLA) that the members' capital contributions would be returned if there were sufficient funds available from a refinancing of the property, or if the entirety of GVC's assets were sold. Transcript, March 17, 2021, p. 301:5-20. He testified that the Preferred Allocation in Exhibit B to the OA was intended to return the members' capital contributions as part of a winding down or liquidation of the company. Id. at p.305:16-306:3. He further testified that the Preferred Allocation was not triggered by any of the subsequent sales of any of the buildings or parcels. Id. at 306:4-10.

Both parties presented forensic accountants to assist in the interpretation of these provisions as to whether the Preferred Allocation[10]. Respondent presented Daniel Gerety, who testified that a sale of any of the parcels would constitute a "capital transaction" as that term is generally understood, thereby triggering a 70-30 distribution pursuant to the Preferred Allocation provision of Exhibit B to the OA. Transcript, March 19, 2021, p. 859:12-860:15. Claimant presented Chris Wilcox, who testified that none of the three building sales triggered the Preferred Allocation, since they did not constitute "a sale of all or a substantial portion of the Company's assets" as stated in Exhibit B. Transcript, March 18, 2021, p. 352:18-353:18. He also stated that GVC's tax returns, prepared by the office of accountant Jim Main, show that none of the sales of the three buildings were treated as though they triggered the Preferred Allocation provision of Exhibit B to the OA. Id. at p. 353:19-354:17. Wilcox further testified that interpreting the Preferred Allocation in the manner supported by Gerety would have prevented Bidsal from enjoying the appreciation of the gain on the buildings that were sold. Id. at 387:10-23.

Essentially, then, it was the opinion of CLA's expert Gerety that all of the proceeds of each of the parcel sales, including the profit or gain, should have been distributed to the members on a

[10] Neither party disputed the qualifications of the forensic accountants to testify as experts in this matter.

70-30 basis until each member had recouped his entire capital contribution. It was the opinion of Bidsal's expert Wilcox that none of the sales constituted capital transactions triggering the Preferred Allocation, and as such all of the proceeds could properly have been distributed on a 50-50 basis.

As set forth above, Bidsal's methodology followed neither of those opinions. He distributed the portion of the sale proceeds constituting the cost basis for each parcel as a return of capital (on a 70-30 basis), and the gain from each sale on a 50-50 basis. GVC's accountant, Jim Main, testified that this was consistent with his interpretation of Exhibit B to the Operating Agreement. Transcript, April 27, 2021, p. 1321:1-1323:3.[11] Wilcox testified that although the Preferred Allocation was not triggered by the sales of the three buildings, the manner in which Bidsal actually distributed the sales proceeds inured to the benefit of CLA. Transcript, March 18, 2021, p. 356:3-11; 377:9-18.

It is the determination of the Arbitrator that Gerety's interpretation of Exhibit B, insofar as each parcel sale triggering the application of the Preferred Allocation, is not a reasonable interpretation of this ambiguous and poorly drafted provision, in light of the substantial evidence in the record regarding the intent of the parties as it relates to these distributions. It is further the determination of the Arbitrator that Exhibit B to the OA evidences the intent of the parties that the Preferred Allocation procedures would apply only in "a sale of all of a substantial portion of the Company's assets," as that phrase is used in Exhibit B. Although Wilcox's interpretation is the more reasonable one, given the evidence of the overall objectives of the parties in forming this entity, Bidsal's actual methodology was far more favorable to CLA than it needed to be under the terms of the OA. An interpretation of ambiguous contractual provisions that makes the agreement

[11] Main did not testify at the Arbitration Hearing, but designated (and cross-designated) portions of his deposition were read into the record at the Hearing.

fair and reasonable will be preferred to one which leads to harsh or unreasonable results. Mohr Park Manor, 83 Nev. at 111, quoting 4 Williston, Contracts, 620 (3rd Ed. 1961).

Therefore, it is the determination of the Arbitrator that the manner in which Bidsal distributed the proceeds of the sales of Buildings C, E and B was more favorable to CLA than required by the terms of Exhibit B to the OA and does not constitute any improper or excessive distribution to Claimant. Noteworthy in this analysis is strong evidence of an agreement between Bidsal and Golshani to treat the sale proceeds in this manner, thereby establishing either: 1) parol evidence of the true intentions and agreement of the parties when the written instrument is ambiguous, M.C. Multi-Family Development, LLC v. Crestdale Associates, Ltd., supra at 913-914 (2008); or alternatively 2) evidence of a subsequent oral agreement to modify the written contract. Eversole, supra at 1260. Here, Bidsal testified that he had conversations with Golshani regarding the manner in which the proceeds from the first building sale (Building C) would be distributed, such that the cost basis would be distributed on a 70-30 basis and the remaining balance would be split 50-50. Transcript of March 19, 2021, p. 640:7-641:20. Bidsal testified that Golshani agreed to this procedure and did not object to it. Id., p. 641:21-642:4. Bidsal testified that the same conversations with Golshani occurred (and the same agreement was reached) for the sales of Building E and Building B. Id. at p. 651:7-652:23. Further evidence of this agreement between Bidsal and Golshani, and of the transparent nature of Bidsal's actions in distributing the proceeds, is found in the following:

- For each of the three sales, Bidsal provided Golshani with a detailed breakdown of the distribution process under the agreed-upon methodology;

- For the sales of Buildings E and B, Bidsal provided Golshani with separate checks for the portion of proceeds divided 70-30 and the portion divided 50-50, pursuant to the detailed breakdown;
- Jim Main testified that he prepared the Company's tax returns consistent with this distribution procedure;
- Tax returns sent to (and reviewed by) Golshani evidenced this distribution procedure, for each year that a building sale took place;
- Golshani's Schedule K-1 form evidenced this distribution procedure;
- Golshani's did not object to the manner in which Bidsal made these distributions until long after the sales were consummated;
- Golshani's testimony that he was not aware of the manner in which Bidsal was distributing the proceeds of the building sales is simply not credible.

This interpretation of the Preferred Allocation in Exhibit B is consistent with the evidence regarding the parties' intent to divide the cost basis portion of the sales proceeds 70-30 and the gain portion 50-50. It is also consistent with the evidence of the parties' intent to allocate gain on a 50-50 basis (See OA, Exhibit A, Sec. 5.1.1.1) and the totality of the evidence establishing that the overall objective of the parties in forming this entity was to divide all gain on a 50-50 basis (see, e.g., OA Art. 5, Section 4.2, providing that the buy/sell provision is designed to provide the selling member with 50% of the appreciation of the entity in addition to his capital contribution).

C. Application of formula to determine purchase price

Following the arbitration award from Judge Haberfeld, Claimant instituted the instant arbitration proceeding (in part) for the purpose of determining a purchase price pursuant to the formula set forth in the OA. Judge Haberfeld's award required Bidsal to transfer his interest in

GVC to Respondent "at a price computed in accordance with the contractual formula set forth in Section 4.2 of the Green Valley Operating Agreement, with the "FMV" portion of the formula fixed at Five Million Dollars and No Cents ($5,000,000.00)…." Haberfeld was not asked to determine the final purchase price using this formula, or to interpret any potentially ambiguous terms within the formula.

The formula to be used for calculating the purchase price, pursuant to Section 4.2, is the following:

> (FMV – COP) x 0.5 + capital contribution of the Offering Member(s) at the time of purchasing the property minus prorated liabilities

OA, Article V, Section 4.2.

For purposes of the instant arbitration, FMV is fixed at $5,000,000 pursuant to Judge Haberfeld's award. COP is defined in the OA as follows:

> "COP" means "cost of purchase" as it [sic] specified in the escrow closing statement at the time of purchase of each property owned by the Company.

OA, Article V, Section 4.1.

Like the language of Exhibit B to the OA, the parties agree that the language contained in the formula is ambiguous. Judge Haberfeld removed any potential ambiguity in the FMV component by fixing that value at $5,000,000.

The definition of COP is unclear and ambiguous. Read literally, it would require taking information from an escrow closing statement at the time of purchase of Company property. However, the parties agree that there is no escrow closing statement reflecting a purchase of the GVC properties, which were acquired by GVC pursuant to a Deed in Lieu agreement. This factual scenario was obviously not contemplated by the OA formula. Additionally, the formula does not

contemplate an acquisition of property through a §1031 tax deferred exchange that borrows its basis from a prior building sold by the entity.

Similarly, the formula is unwieldy in using the "capital contribution of the Offering Member(s) at the time of purchasing the property," as it fails to account for capital contributions recouped at any point prior to the application of the formula. Applying a literal interpretation would allow the member selling his interest to receive double the value of any capital contributions returned to him prior to the sale of his interest.

Like the issue of the interpretation of Exhibit B to the OA, the parties each engaged their forensic accountant to testify regarding reasonable interpretations of the formula in Section 4.2 to be utilized to calculate a purchase price for Claimant's interest in GVC.

Claimant presented the testimony of Wilcox in support of his interpretation of the formula and calculation of a purchase price using a reasonable interpretation of the formula. For COP, Wilcox took the cost basis of all of the parcels as set forth in the Cost Segregation Report and subtracted out the cost basis for Buildings B and E. He also decreased the total value of the common area parking lot to account for the ratio of square footage no longer owned by GVC after selling Buildings B and E. His COP amount, for use in the formula, is $3,136,431. Therefore, according the formula, FMV ($5,000,000) minus COP ($3,136,431) X 0.5 = $931,784.50 ($5,000,000 minus $3,136,431 = $1,863,569 X 0.5 = $931,784.50). To that number, the formula literally requires adding the value of Bidsal's full capital contribution of $1,215,000. However, Wilcox reasonably concluded that Bidsal had already received a portion of his capital contribution when he distributed to himself 30 percent of the cost basis of the buildings sold by GVC. Wilcox calculated that the three sales (Buildings E and B and the remainder of the proceeds of Building C after the §1031 exchange) reduced Bidsal's unreimbursed capital contribution down to $957,226.

Therefore, in accordance with the formula, Wilcox added that number to the previous total to reach a total purchase price of $1,889,010.50 ($931,784.50 plus $957,226 = $1,889,010.50). Although the formula then requires the subtraction of any prorated liabilities, Wilcox testified that no such liabilities exist and no subtraction is therefore necessary. His final calculated purchase price for Bidsal's interest, using a reasonable interpretation of the terms of the formula, is $1,889,010.50. See, Exhibit 201, Schedule 5. This price is exclusive of any interest and presumes that Bidsal is currently still a member of GVC (and therefore entitled to any distributions that have been made since 2017).

Respondent presented the testimony of Gerety in support of CLA's interpretation of the formula and calculation of a purchase price. Gerety agreed that certain terms in the formula could not be read literally, just as Wilcox did before him. Gerety calculated COP by taking the cost basis of all buildings still owned by GVC and came to a COP figure of $3,686,293. His COP is higher than Wilcox's for two reasons: 1) Gerety used the full price on the escrow statement for the Greenway property acquired in the §1031 exchange, rather than the original cost basis for Building C; and 2) Gerety did not partition any portion of the common area parking lot, as he believed that GVC still owns the entire lot. Applying his COP figure to the first portion of the formula, Gerety's calculation is: FMV ($5,000,000) minus COP ($3,686,293) X 0.5 = $656,854 ($5,000,000 minus $3,686,293 = $1,313,707 X 0.5 = $656,854). Gerety then offered two alternatives for the next portion of the formula calculation regarding Claimant's capital contribution at the time of purchase. In his Alternative A, he uses $840,643 based on potentially improper distributions taken and kept by Bidsal, in addition to offsets for rents and depreciation. In his Alternative C, he uses $975,814 (a figure comparable to Wilcox's determination of unreimbursed capital contributions payable to Bidsal. Gerety also found $34,499 in prorated liabilities (half of security deposits held

by GVC), which he subtracted pursuant to the formula for both Alternatives A and C. Therefore, under Alternative A, Gerety's final purchase price for Bidsal's interest in GVC is $1,462,998. Under Alternative C, Gerety's final purchase price is $1,598,169. See, Exhibit 202.

It is the determination of the Arbitrator that Wilcox's interpretation and application of the formula in Section 4.2 of the OA is the more reasonable approach. Both parties agree that the formula cannot be reasonably applied pursuant to the literal terms of the OA. A strictly literal approach would allow Bidsal to use only the cost of the Greenway property as COP (the only one for which there is an escrow closing statement) and his full capital contribution of $1,215,000, resulting in a windfall to Bidsal not contemplated by the parties at the execution of the OA. Wilcox's COP figure is the more reasonable approach, allowing for Bidsal as a member of GVC to realize the appreciation of Building C when it was used for the §1031 exchange with the Greenway property. Wilcox's conclusion that no prorated liabilities exist is also the more reasonable approach, given the nature of the security deposits held separately by GVC. Therefore, applying the formula in a fair and reasonable manner, and giving due consideration to the intent of the parties, it is the determination of the Arbitrator that the appropriate purchase price for Bidsal's interest in GVC is the sum of $1,889,010.50.[12]

D. Effective Date of Sale

In addition to the purchase price under the formula in Section 4.2 of the OA, it is necessary to determine an effective date of the sale of Bidsal's interest in GVC. Respondent avers that the effective date of sale is September of 2017, the time when Respondent contends his counteroffer transaction should have been consummated. This contention is without merit.

[12] This purchase price is exclusive of any award of fees and costs awarded by Judge Haberfeld in the prior arbitration proceeding.

The transaction has never been completed. Judge Haberfeld, in his award in April of 2019, directed that the transaction take place forthwith. He did not find an effective date of the transaction to have occurred over a year earlier. The OA provides for a procedure for completing a sale of a membership interest, which procedure has not yet been completed. Claimant has continued to act as a member (and manager) of GVC since September of 2017, and Respondent cannot now divest Claimant of his membership interest because it has not yet paid him for his interest pursuant to the OA. Bidsal has appropriately received distributions since 2017, and since he remains a member of GVC, he cannot be required to divest himself of those distributions. He has also been treated as a member for GVC for tax purposes since 2017 and paid taxes on the distributions that Respondent now seeks to claw back. Additionally, treating the sale as having an effective date of September of 2017 would require Respondent to compensate Bidsal for his services a property manager over the past four years.

It is the determination of the Arbitrator, based upon all of the relevant evidence in this matter, that the effective date of the purchase of Bidsal's interest has not yet come to pass. Pursuant to Judge Haberfeld's final award, the transfer is to take place ten days of the effective issuance thereof. As that award (through Judge Kishner's denial of Bidsal's Motion to Vacate and Order Confirming Award) has been stayed pending the appeal to the Nevada Supreme Court, enforcement Judge Haberfeld's award requiring the sale is effectively postponed. The instant Award is essentially declaratory in nature. Should the stay be lifted, Judge Haberfeld's award directing that the sale take place becomes effective and the instant Final Award has now used a reasonable interpretation of the formula in Section 4.2 to arrive at purchase price.[13]

[13] This analysis presumes, of course, that Judge Kishner's Order Confirming Award is upheld by the appellate court. This presumption is not based on any consideration of the merit of such an appeal, but any other presumption effectively makes this Award moot.

In closing argument, counsel for Claimant has requested interest be awarded from September of 2017 forward on the purchase price, arguing that Bidsal has lost the right to use those funds over the last four years based on CLA's failure to perform. It is the determination of the Arbitrator that Bidsal is not entitled to recover interest on funds he would've received for a transaction which has not yet occurred. Judge Haberfeld did not rule that Respondents inappropriately utilized the arbitration provision in the OA to determine that Bidsal must sell his interest in GVC. Similarly, the undersigned Arbitrator does not find that Bidsal inappropriately utilized the arbitration provision in the OA to institute this proceeding to arrive at a purchase price and an effective date of the sale. Notably, Claimant's forensic accountant, Wilcox, also testified on this issue from an accounting perspective:

> Q: If the sale wasn't effective because no purchase money was ever paid and Mr. Bidsal continued to be a member up until the time he actually gets paid, would he be entitled to this interest amount?
>
> A: [Wilcox] No. He would still own the property, so he would not be entitled to the interest.
>
> Q: Okay. And so he would still, under that theory, be entitled to his distributions from the general operations of the company?
>
> A: Exactly. Yes.

Transcript, March 18, 2021, p. 424:16-25.

Claimant is not entitled to recover interest on the purchase price amount as the transaction cannot be consummated under any circumstances until after the completion of the appellate process (and a concomitant lifting of the stay). He is still a member of GVC and no amount should be deducted from the purchase price for any distributions Claimant received after September of 2017.

V. Award of Attorneys' Fees and Costs

In the Interim Award, the Arbitrator included the following language regarding fees and costs:

> Article III, Section 14.1 of the Operating Agreement states as follows:
>
> The fees and expenses of JAMS and the arbitrator shall be shared equally by the Members and advanced by them from time to time as required; provided that at the conclusion of the arbitration, the arbitrator shall award costs and expenses (including the costs of the arbitration previously advanced and the fees and expenses of attorneys, accountants and other experts) to the prevailing party.
>
> Operating Agreement, Article III, Section 14.1
>
> A party prevails if it succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing suit. Valley Electric Association v. Overfield, 121 Nev. 7, 10 (2005). This Interim Award adopted the recommendations of Claimant as to 1) the interpretation of the Preferred Allocation language in Exhibit B to the Operating Agreement, including Claimant's interpretation of the intent of the parties; 2) the method of calculating a purchase price under the formula contained in Section 4.2 of the Operating Agreement; 3) the actual purchase price as calculated by Claimant's forensic accountant, including Claimant's position as to the propriety of certain distributions; 4) the effective date of the sale; and 5) various claims for relief contained within Respondent's Fourth Amended Answer and Counterclaim. Given the foregoing, the Claimant is the prevailing party.

Interim Award, pp. 25-26.

The Interim Award set forth a briefing schedule for Claimant's application for fees and costs, which schedule was later modified by the agreement of the parties. Claimant filed an Application for Award of Attorney Fees and Costs on November 11, 2021 and Respondent filed an Opposition thereto on December 3, 2021. Claimant filed a Reply brief on December 17, 2021, Respondent filed a Supplemental Opposition on December 23, 2021, and Claimant filed a Response to CLA Properties' Rogue Supplemental Opposition on December 29, 2021. A telephonic hearing on the application for fees and costs was conducted by the Arbitrator on January 5, 2022, during which it was determined that redacted billing statements would be produced by

Claimant to Respondent and that further briefing was necessary. CLA filed a Second Supplemental Opposition to Claimant's Application for Attorneys' Fees and Costs on January 26, 2022. Claimant filed a Second Supplemental Reply brief on February 15, 2022, and a telephonic hearing was conducted on February 28, 2022. In addition to the Arbitrator, Claimant appeared personally with James E. Shapiro, Esq. and Douglas D. Gerrard, Esq. Respondent appeared through counsel Rodney T. Lewin, Esq, and Louis E. Garfinkel, Esq.

As set forth above, support for an award of fees and costs to the prevailing party is found in Section 14.1 of the GVC Operating Agreement. The provision is somewhat mandatory, indicating that the "arbitrator ***shall*** award costs and expenses," (emphasis supplied), including the costs of arbitration. Respondent herein does not dispute that Section 14.1 provides for an award of fees and costs to the prevailing party, but takes issue with the amount of fees and costs claimed by Bidsal.

A. Attorneys' Fees

Respondent correctly notes that the OA incorporates Nevada law for the instant proceedings, which traditionally relies upon Brunzell v. Golden Gate National Bank, 85 Nev. 345, 455 P.2d 31 (1969), for the considerations applicable to an award of reasonable fees and costs. The Court in Brunzell noted four primary factors to be considered:

1. The qualities of the advocate: his ability, training, education, experience, professional standing and skill;
2. The character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation;

3. The work actually performed by the lawyer: the skill, time and attention given to the work; and

4. The result: whether the attorney was successful and what benefits were derived.

Brunzell, 85 Nev. at 349, quoting Schwarz v. Schwerin, 336 P.2d 144, 146 (1959). The Brunzell court directed that all four factors be given consideration and that no one element should be given undue weight. 85 Nev. at 349-350.

Even though Section 14.1 of the OA could generously be interpreted to direct an award of all fees and costs incurred, it is the determination of the Arbitrator that Nevada law requires consideration and determination of a reasonable award of fees and costs based on the Brunzell factors outlined above. Additionally, although certain of the attorney billing statements reference a "flat fee," counsel for Claimant has stated, as officers of the Court, that the instant matter was not billed as a flat fee and that all requested fees were actually billed and paid by Claimant (or remain outstanding, to be paid).

Respondent does not challenge the qualities of the advocates representing Bidsal, and the Arbitrator finds no reason to question such qualities. Indeed, counsel for both parties would satisfy this prong of the Brunzell analysis.

Respondent also does not significantly challenge the character of the work to be performed, to the extent that this litigation involved issues with some level of complexity and sophistication. These proceedings were document intensive and involved complex legal and factual issues.

Respondent does challenge the work actually performed by counsel for Claimant, in several material respects. First, Respondent challenges certain of the redactions in the billing statement provided by Claimant, indicating that it deprives Respondent of the ability to determine exactly how much time was spent on each task. However, the redactions were appropriate to protect

information protected by the attorney-client privilege and the attorney work product doctrine. See, Wynn Resorts, Ltd. v. Eighth Judicial District Court, 399 P.3d 334, 341 (2017). Additionally, Respondent contends that certain "block billing" entries in the billing statements prevent analysis of how much time was spent on each task within the block. However, block-billed time entries are amenable to consideration for an award of reasonable fees and must be considered by the Arbitrator. See, Mendez v. County of San Bernadino, 540 F.3d 1109, 1129 (9th Cir. 2008). Respondent also challenges the fact that Claimant had two primary attorneys conducting the proceedings throughout on behalf of Claimant. However, given the nature of the litigation, it is the determination of the Arbitrator that this does not constitute inappropriate duplication of efforts such that an award of reasonable fees should be limited to the work of a single attorney. Respondent engaged two, and at some points three, attorneys during the course of the proceedings, each of whom provided salient contributions to the litigation. After a review of all of the information and argument submitted with this Application, the Arbitrator has taken into consideration the potential duplication of efforts for some of the work performed by Mr. Shapiro's associate attorney in determining a reasonable fee award.

With respect to the results achieved, Respondent contends that deductions in the overall fee award should be applied for any work on motions or objections for which Bidsal was ultimately found not to have prevailed. Respondent identified motions it prevailed on, and suggested that fees for work on those motions should either be deducted from any fee award to Claimant or otherwise awarded to Respondent for prevailing thereupon. However, neither the OA nor Nevada law provide for such a mechanism when determining an award of a reasonable fee to the prevailing party. It is not necessary, in applying the Brunzell factors, to make findings as to the party that prevailed on each and every motion and objection. Instead, the appropriate analysis is to consider

the work performed and the result achieved as a whole and award a reasonable fee to the prevailing party in the light of the totality of the litigation before the Arbitrator. As set forth above, consideration under the fourth Brunzell factor is given to the fact that Claimant prevailed on an overwhelming majority of the issues presented for consideration during the Arbitration, even if Respondent prevailed on some motions during the course of the proceedings.

Claimant has requested an award of fees in the amount of 444,225.00 incurred by two separate law firms. The Amended Affidavit of Attorney Fees submitted by James E. Shapiro, Esq., requests fees in the amount of $313,985.00, over sixty percent of which was billed by Mr. Shapiro's associate attorney, Aimee M. Cannon, Esq. The Supplemental Affidavit of Attorney Fees For Douglas D. Gerrard, Esq., on Claimant's behalf requests fees in the amount of $137,610.00. Although Mr. Gerrard appeared to serve as lead counsel during the Arbitration Hearing, his fees, though billed at a higher rate than Mr. Shapiro and Ms. Cannon, account for just over thirty percent of the total fees requested on behalf of Claimant. The hourly rates for all of the Claimant's attorneys are reasonable and customary.

Given all of the foregoing, and in consideration of the Brunzell factors set forth above, and having considered the arguments of counsel, the briefs submitted by the parties and any issues of potential duplication of efforts among counsel, it is the determination of the Arbitrator that Claimant shall be awarded a reasonable attorney fee as the prevailing party in the amount of $300,000.00.

B. Costs

Claimant has submitted an Amended Verified Memorandum of Costs and Disbursements, verified by counsel, seeking reimbursement of costs in the total amount of $155,644.84. The

attached verification shows that the costs have been necessarily incurred. See, Cadle Co. v. Woods & Erickson, LLP, 131 Nev. 114, 120, 345 P.3d 1049 (2015).

The largest component of Claimant's costs are the fees for expert witnesses involved in testifying and preparing reports in preparation for the Arbitration Hearing. Respondent has cited to NRS 18.005(5), which allows for a maximum of $1,500.00 for recoverable expert witness costs, unless it is determined that a larger fee is necessary. First, it must be noted that costs are recoverable under the OA provision, not solely pursuant to NRS 18.005. Section 14.1 of the OA does not place a limit on recoverable expert fees. Second, Respondent does not dispute that a Claimant's expert Wilcox (through his firm, Eide Bailly) was entitled to a fee in excess of the limit set forth in 18.005 (see, Respondent / Counterclaimant CLA Properties, LLC's Opposition to Claimant Bidsal's Application for Attorneys' Fees and Costs, p. 10). Finally, after reviewing the billing statements, it is the determination of the Arbitrator that a fee in excess of $1,500.00 is warranted and recoverable.

Based on all of the information provided, the Arbitrator hereby determines that Respondent is entitled to recover costs in the amount of $155,644.84, as follows:

• Runner / Process Service Fees	$100.65
• Copy costs	$1,342.00
• Research / Lexis Nexis	$181.15
• AT&T Teleconference Line Charges	$46.20
• Deposition / Transcript Fees	$17,885.25
• JAMS Fees	$41,208.29
• Expert Witness Fees	$94,881.30
	$155,644.84

VI. Conclusion

Based upon all of the foregoing, the pleadings and papers on file herein, the evidence presented at the Hearing, the applicable law and all arguments of counsel, the Arbitrator hereby:

- FINDS IN FAVOR OF RESPONDENT on the issue of Respondent's alleged failure to tender;
- FINDS IN FAVOR OF CLAIMANT on the interpretation of the Preferred Allocation as contained in Exhibit B of the Operating Agreement, as set forth more fully herein;
- FINDS IN FAVOR OF CLAIMANT on the interpretation of the formula in Section 4.2 of the Operating Agreement, such that the applicable purchase price for Claimant's interest in GVC is $1,889,010.50;
- FINDS IN FAVOR OF CLAIMANT on the effective date of the transaction, such that the effective date is NOT deemed to be September of 2017 but shall occur pursuant to Judge Haberfeld's prior Award after the conclusion of the appellate process;
- FINDS IN FAVOR OF CLAIMANT as to paragraphs B, C, D, F, and H as contained within the Counterclaim set forth in Respondent's Fourth Amended Answer and Counterclaim to Bidsal's First Amended Demand, filed on or about February 19, 2021;
- Awards Attorneys' Fees to Claimant pursuant to Section 14.1 of the GVC Operating Agreement and Brunzell v. Golden Gate National Bank, 85 Nev. 345, 455 P.2d 31 (1969), in the amount of $300,000.00;
- Awards Costs to Claimant pursuant to Section 14.1 of the GVC Operating Agreement in the amount of $155,644.84.

Dated: March 12, 2022

Hon. David T. Wall (Ret.)
Arbitrator

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Steven D. Grierson
CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

CLA PROPERTIES, LLC, Petitioner, vs. SHAWN BIDSAL, Respondent.	CASE#: A-22-854413-B DEPT. XXXI

BEFORE THE HONORABLE JOANNA S. KISHNER
DISTRICT COURT JUDGE
TUESDAY, MAY 9, 2023

RECORDER'S TRANSCRIPT OF PENDING MOTIONS

APPEARANCES

For the Petitioner TODD E. KENNEDY, ESQ.

For the Respondent JAMES E. SHAPIRO, ESQ.

RECORDED BY: LARA CORCORAN, COURT RECORDER

Case Number: A-22-854413-B

Las Vegas, Nevada, Tuesday, May 9, 2023

[Case called at 8:29 a.m.]

THE COURT: Okay. We're on the record in case 854413, CLA Properties v. Shawn Bidsal and related cases.

So, counsel, please make your appearances.

MR. KENNEDY: Good morning, Your Honor. Todd Kennedy for the Movant CLA Properties.

MR. SHAPIRO: Good morning, Your Honor. Jim Shapiro for Shawn Bidsal. Also present is Ben Gerard, who is a client representative.

THE COURT: Okay. Thank you so much. Feel free to sit down, stand up, whatever is comfortable for you.

The Court's first question is going to be, is there's two matters that the Court shows that's on for today. And one of them is Bidsal's motion to reduce the award to judgment and award of attorney's fees and costs, Doc 49. Opposition thereto, Doc 55. Reply Doc 57. And then CLA Properties motion to approve the payment of fees award in full and order preserving appeal rights as to the fees and right to return if appeal is successful, and request for order shortening time, Document 58.

So, realistically, I did not see an opposition to document 58 unless -- now I have been --

MR. SHAPIRO: It was filed around two or three in the afternoon. We did email a courtesy copy. We tried to call chambers to

see if there was more that we needed to do.

THE COURT: Well, you can appreciate getting it -- yeah.

MR. SHAPIRO: I know, Your Honor. It was in order to shorten time, and we were moving as quickly as possible.

THE COURT: Yeah, as I noted.

MR. SHAPIRO: Okay.

THE COURT: And then dealing with -- okay. So then what I'm going to need to do is I will take a few moments then let's do the other one first --

MR. SHAPIRO: Okay.

THE COURT: -- because what I was going to say, if it was intentional not to have an opposition --

MR. SHAPIRO: No.

THE COURT: -- then I was going to deal with the EDCR 2.20 issue first. But since that's not the case, I'm going to have you do the other one first. We may need to take a few minute break so I can just review.

MR. SHAPIRO: Okay.

THE COURT: I mean, I can appreciate what the opposition may be, because it may be -- but I want to make sure I catch everything.

So, counsel, Bidsal's motion to reduce the award to judgment.

MR. SHAPIRO: Yes, Your Honor. Thank you, Your Honor. This is our motion to reduce the arbitrator's award that was confirmed by this Court previously to a judgment. We are making the motion

pursuant to NRS 38.243. We are also seeking an award of interest from the date of the final award forward, which is consistent with NRS 17.130, as well as the *Mausbach v. Lemke* decision from the Nevada Supreme Court. And we are asking that in accordance with NRS 38.243, the Court award Bidsal the attorney's fees and costs that he incurred in both obtaining confirmation of the arbitration award as well as reducing it to judgment. There have been some oppositions filed, obviously, and so I'll briefly go through those -- each one of the requests.

To start off with, I want to point out and draw Your Honor's recollection to the fact that at the confirmation hearing, Your Honor applied both the federal law and the state law. And in fact, there was colloquy among counsel and the Court regarding that matter. And everyone agreed that the outcome was the same under both standards.

The reality is that the Federal Arbitration Act does not vest this Court with authority to confirm the award, nor does it vest this Court with authority to do anything. The Federal Arbitration Act was the substantive law upon which the arbitration was based, but the confirmation of the award occurs under NRS, which is where the Court draws its authority.

And, in fact, this is going way back. But on the first confirmation hearing, we actually filed an action in federal court to try and enforce the Federal Arbitration Act, and it was dismissed for lack of jurisdiction because the State Courts have jurisdiction over the matter. There's no question that the Nevada NRS 38 applies.

And in fact, if you look at the Doc 1 in this matter was CLA's

motion to vacate arbitration award, and they cite NRS 38.241 and for entry of judgment. That is the caption, the very first document filed. The initiating pleading in this case sought relief under NRS 38.241. And if you look at Doc 19, which was Bidsal's opposition to their motion to vacate and counter motion to confirm, on page 21 of that Bidsal relied on NRS 38.244, subparagraph 2. And when Your Honor confirmed the award, Your Honor confirmed it both under the standards of the Federal Arbitration Act as well as Nevada Statute.

Well, under Nevada Statute NRS 38.243 it states, "upon granting of an order confirming vacating without directing a rehearing, modifying or correcting an award, the Court shall enter a judgment in conformity therewith. The judgment may be recorded, documented, and enforced as any other judgment in a civil action." That's NRS 38.243. It's not permissive, it's not discretionary, it's mandatory. The Court shall enter a judgment.

Now, we had a discussion at the hearing -- confirmation hearing. We were asking that it be reduced. Your Honor said, I don't think I can do that right here. We said, no problem, we're going to file a separate motion, which we then did. And we are here today asking that NRS 38.243 be enforced, that the order that Your Honor previously confirmed shall be entered as a judgment.

CLA argues that there's no need to reduce the final award to judgment because it's already a final appealable order. But it ignores the fact that without a judgment, none of the methods of collection are available to Mr. Bidsal. Mr. Bidsal cannot take Your Honor's order

confirming the arbitration award and seek a writ of execution and go execute on CLA Properties bank accounts to obtain the judgment.

THE COURT: Now, let's walk back a quick second, because as you all know, you have interchangeably used judgment for a lot of different things. So let's make sure we're talking about -- we're talking the attorney's fee award, we're talking about the substantive award. Just make sure whenever you're referencing it, please just clarify--

MR. SHAPIRO: Sure.

THE COURT: -- which one you're talking about because sometimes you all have utilized the terms judgments and orders to mean a lot of different things. I just want to make sure you have a clear record.

MR. SHAPIRO: Okay. Fair enough. So judgments can take the form of many different forms.

THE COURT: Yeah, I know what judgments are. I know what orders are. And that's not the issue. The issue is how you're using the term --

MR. SHAPIRO: Okay.

THE COURT: -- when you're articulating it.

MR. SHAPIRO: Okay. The way I'm using a judgment is that right now, Judge Wall issued his final award in, I want to say, March of 2022. That final award has not been reduced to a judgment. All of the findings contained in that final award, all of the monetary findings and monetary awards in that final award have not been reduced to judgment. And we are asking that Judge Walls' March -- I'm going to say March. I might be wrong, but I'm pretty sure it was March. March 2022 final

award be reduced to judgment. That's what we're seeking. Now, does that answer your question?

THE COURT: Right. Like I said, you all are using it in broad senses to mean a lot of different things, and your docket and footnotes with regards to first and second, however you feel to -- I mean, so that's why you may want it to be clear. Maybe you all don't.

MR. SHAPIRO: No, I do. I certainly do, Your Honor. Thank you.

Now, CLA argues that there's no need to reduce it to judgment, but if there's no need -- number one, there is a need because we can't go collect on it. And, number two, if there's no harm in reducing it to judgment, why are they opposing it? The reality is there is a reason that they're opposing it. And they're opposing it because they don't want Mr. Bidsal to have the ability to get writs of execution and go and collect on the monetary award contained in Judge Wall's March 2022 final award. NRS 38.243 is clear. It's mandatory. The Court shall enter a judgment, and that's what we're asking the Court to do.

Now, we're also asking the Court to enter or to award interest on Judge Wall's March of 2022 final award until it is paid. The legal authority that we cited for that is NRS 17. But in this case, NRS 17 is not directly on point because we have a final award in an arbitration and not the service of the summons and complaint. Thankfully, the Nevada Supreme Court in *Mausbach v. Lemke* made it clear that an award of interest from the date of entry of the arbitration award forward is appropriate under NRS 17.130.

And CLA cites or relies upon the *Mausbach v. Lemke* decision, but they rely upon it in an incorrect fashion, and I want to just discuss that for a second. In the *Mausbach v. Lemke*, and I hope I'm saying that right, but in its 866 P.2d 146 or 110 Nevada 37. It's the 1994 Nevada Supreme Court decision. In that decision, the Nevada Supreme Court was tasked with deciding whether or not a District Court Judge could add interest -- prejudgment interest is the way they used it, although they kind of had the same issue that we're having. Whether the District Court could award interest before the time that the arbitrator entered the arbitrator's final award. The District Court had done so.

The party against whom interest had been awarded appealed it, and the Nevada Supreme Court overruled the District Court's decision and found that the District Court could not award interest prior to the date that the arbitrator entered the arbitrator's final award because that would be impermissible modification of the final award. If they wanted interest before that date, they had to seek that interest from the arbitrator.

But, importantly, in the same opinion, in fact, in the same paragraph, the Supreme Court says, "we note that we have said nothing that would preclude an arbitrator from expressly providing for prejudgment interest in an award, even where the added interest would cause the total award to exceed the $25,000 limit imposed by the Arbitration Act." And then this is the key language. "Nor does our ruling preclude the District Court from awarding post-judgment interest commencing from the date of entry of the award itself."

So in this decision, the Nevada Supreme Court said it is inappropriate for a District Court to enter -- to award interest that predates the arbitrator's final award. But they specifically stated that it's totally appropriate for a District Court to order interest on an arbitration award from the date the arbitration award is entered forward. And that's what we're asking Your Honor to do.

CLA could have paid the monetary award contained in Judge Wall's March 2022 final order. They chose not to. Who does that hurt? Who does that benefit? It benefits CLA because essentially they're getting a $400,000 interest free loan. Who does it hurt? It hurts, Mr. Bidsal, because in March of 2022, it was determined by Judge Wall that he was owed $400,000 and change, and yet he has not received that money. Your Honor has a question. What's your question?

THE COURT: I'm going to wait until you're finished.

MR. SHAPIRO: Oh, okay.

THE COURT: It's going to be a *Mausbach* question, because they're relying on, right, a statute that had been appealed previously, right, but there's a different version of the underlying statute in which they're relying on.

MR. SHAPIRO: Well --

THE COURT: That's what I was going to ask you at the end, but.

MR. SHAPIRO: The principle stays the same irrespective of the statute. The statute -- the concept is, can you award interest on an arbitration award? And the principle is the same. The principle is that

the Court can't modify the award. The Court has to accept the award in its then condition. But its then condition is that Mr. Bidsal was owed 400 plus thousand dollars as of March of 2022, and he wasn't paid that. Under that -- the principle is that it's not a modification of the arbitration award to order the other party to pay interest from the date of the arbitration award forward. And clearly, that's the only way that you can ensure that Mr. Bidsal receives the full benefit of the award. Otherwise, CLA has no motive or incentive to pay the amounts awarded. They can sit on this for as long as possible.

In fact, if you accept their position, they can prevent us from having the ability to get a writ of execution, they don't have to pay interest, and we've got to figure out how we're going to enforce this and how we're going to collect on it. That's the position they want the Court to take, but that's not what Nevada law says.

Under the principles of the *Mausbach* decision and under NRS 17.130, interest should be added to Judge Wall's March 2022 final award from the date of entry, which was March 22nd, I believe. Give me two seconds, I will find that. And now it's escaped. It was March of 2022, and I believe it was March 22. But whatever the date that the final award was entered, interest should accrue.

And I would point out, Your Honor, that that is completely consistent with Your Honor's confirmation of the first arbitration award issued by Judge Haberfeld. Your Honor entered an order confirming that award, reducing it to judgment, and ordering attorney fees to accrue -- or, excuse me, interest to accrue from the date Judge Haberfeld

entered his initial arbitration award forward until paid, and Mr. Bidsal paid the interest on that.

Now, let's turn to the motion for attorney fees. There is no question that, as I pointed out, the motion to vacate, CLA relied specifically on NRS 38.241. In our opposition, we relied upon NRS 38.244. When you look at NRS 38.243, sub 3, it states, "on application of a prevailing party to a contested judicial proceeding under NRS 38.239, 241, or 242." What was the statute that CLA was relying upon? NRS 38.241, according to the very first page of the initiating pleading. And what was the statute that -- yeah, it was the same statutes that Mr. Bidsal was relying upon as well.

So going back to NRS 243, sub 3, "on application of the prevailing party to a contested judicial proceeding under NRS 38.239, 241, or 242, the Court may add reasonable attorney fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made to a judgment confirming, vacating without directing a rehearing modifying or correcting an award."

In this case, we are asking the court to enforce that provision. We're asking for an award of the attorney fees incurred in that process. The total award is $54,070, and under the *Duke v. Graham* merits test, that full amount should be awarded. Now, we're also asking for $911.49 in costs incurred by Mr. Bidsal.

Defendants argue that it's not allowed under the Federal Arbitration Act, and they're correct. There are no attorney fees allowed under the Federal Arbitration Act. So how do we get attorney fees in this

case, and we don't get them in the first case? The answer is simple, Your Honor. As the Nevada Supreme Court made clear in their order affirming your Honor's prior order, the Supreme Court noted that the Judge Haberfeld's arbitration award was conferred solely pursuant to the Federal Arbitration Act. And so the Supreme Court said an award of attorney fees is inappropriate in that case.

Unlike that case, CLA themselves were seeking relief under NRS 38.241. The law that was applied -- the relief that was sought, the law that was applied --

THE COURT: NRS 241 at the time of Judge Wall or are you saying NRS 241 in front of this Court, because it was Judge Wall or just for the first time in front of this court?

MR. SHAPIRO: I'm saying --

THE COURT: It wasn't clear which one you were saying.

MR. SHAPIRO: I'm saying -- CLA is the one is the party who filed the initiating paperwork in this action, the action to confirm Judge Wall's arbitration award in March of 2022. In that pleading, unlike the first time around, which is the Judge Haberfeld arbitration award, CLA Properties specifically was relying upon NRS 38.241.

THE COURT: But back to Judge Haberfield, you both -- I mean, remember, there was that argument back and forth about which one it really was, federal or state. So are you saying there's a different scenario between Haberfield versus Walls?

MR. SHAPIRO: What I'm saying is that based upon the record, based upon Your Honor's order confirming Judge Haberfeld's

award, the only legal authority relied upon was the Federal Arbitration Act. And on that basis, the Supreme Court said there's no allowance for an award of attorney fees.

THE COURT: But are you contending that Judge Wall was -- was he also -- are you saying that he also was under the FAA, or you're just saying, since you both agreed here in open court that the result would be the same, then you're utilizing the fact that both parties said the result would be the same. So, therefore, in triggering attorney's fees, are you saying that Judge Wall specifically did FAA and NRS?

MR. SHAPIRO: Judge Wall did not specifically do FAA and NRS.

THE COURT: Okay. Because I couldn't find anywhere in the record --

MR. SHAPIRO: No.

THE COURT: -- that he did.

MR. SHAPIRO: No.

THE COURT: That's why I'm asking. Okay.

MR. SHAPIRO: No, he did not. The difference what I am saying is the difference, is that unlike the process by which Judge Haberfeld's decision was confirmed, I'll call that the 2019 action because it was --

THE COURT: Okay. No. Yeah.

MR. SHAPIRO: -- initiated in 2019. In this action, both parties specifically cited and relied upon NRS. And because they both specifically and cited -- cited and relied upon the Nevada Revised

Statutes, then that allows -- and, Your Honor, when you enter the order, you're right, both parties said the results are going to be the same. Based upon that, NRS 243 is applicable. And that's the distinguishing factor.

At the end of the day, the arguments made -- well, I don't know about the arguments made. I can't make that representation because I haven't gone back and looked at all the arguments made. But what I can say is that based upon the relief being sought by the parties, when you compare the Judge Haberfeld confirmation proceedings versus the Judge Wall confirmation proceedings, the release sought by the party differed dramatically. And the difference is that CLA was specifically relying upon the NRS 38.241 in their efforts, as was Mr. Bidsal, and, as a result, NRS 38.243 is now applicable. And based upon that, we are asking for an award of attorney fees.

THE COURT: Okay.

MR. SHAPIRO: And if Your Honor has any questions, I'd be happy to answer them.

THE COURT: Thank you. But I think I'm good for right now. Let me hear --

MR. SHAPIRO: I reserve some right to, obviously --

THE COURT: Sure.

MR. SHAPIRO: -- reply.

MR. KENNEDY: Good morning, Your Honor.

THE COURT: And you all agree Judge Wall was March 12, right?

MR. SHAPIRO: Yes.

MR. KENNEDY: I believe that's correct, Your Honor. I don't have it in front of me.

THE COURT: March 12, 2022?

MR. SHAPIRO: Yeah. March 12th, yes.

THE COURT: Okay. I just heard a couple of days popped around, but I show March 12th. Okay. Go ahead, please. Go ahead, counsel, whenever you're ready.

MR. KENNEDY: Thank you, Your Honor. I'm going to start with the request to reduce to judgment first.

THE COURT: Okay.

MR. KENNEDY: Your Honor, to be honest, when we saw the motion to reduce, we were a bit confused because I was here in court the last time. There was a back and forth between the Court and opposing counsel about was a judgment necessary or not? And at least what I understood the Court was commenting on is that attorney's fees awards, after a decision on the merits, are special orders post-judgment, and they're not always included in the judgment, and that -- and whether or not it was necessary.

Now, I didn't weigh in on that when we were there, Your Honor, because, frankly, it was an issue for my opposing counsel. But I did pay attention when counsel said we checked the law, and we agreed there's no judgment necessary here. So we were confused why we were seeing this motion. And frankly, Your Honor, a lot of it has to do -- and it has nothing to do with special damages. I don't know why they're

talking about special damages in their reply brief. I'm not arguing there are special damages. I don't think the Court was referring to special damages, which would be part of the damages award.

THE COURT: To be clear, there's a Nevada Supreme Court case directly on point. You don't amend a judgment when somebody just wants to add attorney fees and costs, because attorney fees and costs are a separate appealable order. That's what the Court was referring to.

So, realistically, you've got attorney fees and costs. Since it's a separate appealable order, you don't need to have an amended judgment. There are so many people who submit amended judgments and then we always have to return them and cite the case because we say, you know what I mean, now it's a separate appealable order. That is distinct from attorney's fees, *Sandy Valley*, et cetera, where they articulated special damages. So the Court was not changing -- I was citing Nevada Supreme Court precedent with regards to appealable order. How that plays into that, feel free to go ahead. I was just clarifying where --

MR. KENNEDY: Certainly, Your Honor. So when we saw the motion suffice it to say our response brief was a result of -- well, my client's significant skepticism about the motives of Mr. Bidsal wanting a judgment he said he didn't need before. And then perhaps highlighted by Bidsal's ability to change position 180 degrees, as we see today, and we've seen in other issues in this case.

But from our perspective, Your Honor, we believe that the

confirmation order itself was sufficient -- was itself -- was a final enforceable order that could be used to obtain execution.

THE COURT: But the confirmation order was not just attorney's fees, correct?

MR. KENNEDY: Correct.

THE COURT: Okay. So --

MR. KENNEDY: But it -- I'm sorry, Your Honor.

THE COURT: Oh, sorry. So going to the question or statements, right, of opposing counsel as stated in the brief, right, on behalf of his client, if the intent wasn't to, quote, "add attorney's fees to an underlying award of X," right, why wouldn't they have a judgment? I mean, is your client waiving anything with regards to the titling of confirmation versus judgment so, that if they're seeking to recover anything that's not an issue down the road? You understand those are some of the questions that are going to come to the Court's mind. Feel free to address it whenever you want.

MR. KENNEDY: Certainly, Your Honor.

THE COURT: Go ahead, please.

MR. KENNEDY: In fact, to cut to the chase, our position was we thought what you ordered was something they could take and get a writs of execution on and execute on. In fact, that's one of the reasons why we have the other motion on file today. We think it is. But, Your Honor, the reality is obviously Mr. Bidsal, and his counsel don't think it is. If the Court doesn't believe that what you -- the order you entered is something they could do that, I think the best thing for the Court to do

today would be to reduce at least that attorney's fees portion to a judgment so that they can execute, because we think they can already. But I would much rather have clarity on that point for purposes of my other motion than have it left unclear.

We're not sitting here trying to -- we certainly are not trying to put Mr. Bidsal in a situation where he does not have an enforceable order. You confirmed an award of attorney's fees. And what our subsequent actions are saying, well, let's deal with that now. But if there needs to be a judgment in place on that so it's an enforceable order, then, Your Honor, that's probably the way to create clarity here, which is what we would like. Because what we don't want to do is be a year or two years down the road and be facing Mr. Bidsal saying something else. And that's really the issue, Your Honor, on that point.

As for interest, Your Honor, first I want to dispel some incorrect notions that we seem to be arguing different positions on this. Our opposition, we acknowledged that the Court, in the last proceedings in 2019, entered an order that gave CLA interest to the time the award was -- the final award was issued. We acknowledge that. And we not, my opposition, cited to the Court the *Mausbach* case. We were the ones that raised it to the Court and said, hey, the Supreme Court has said this, but trying to argue the law.

But what we were dealing with was in a motion that says, hey, we want prejudgment interest. Well, it's not really pre-judgment interest. It's post award interest. We wanted to be clear. If they're asking for anything pre award, they can't have that. He's filed a pre-

judgment interest. And so we want to make sure that *Mausbach* says you can't have that.

We acknowledge that the Supreme Court commented that District Courts have discretion to award interest post award prior to that. The sum and substance of our opposition, Your Honor, is if they wanted that interest, they should have asked during the confirmation proceedings. That is a substantive part of the judgment. That's a substantive part of the award, that's a substantive part of the confirmation. And they should have asked it then, and by not doing it, they waived it, particularly when we have a situation where now that's been appealed and there's a question of whether there's even jurisdiction to adjust that.

THE COURT: So you're saying it falls outside of a *Honeycutt Foster Dingwall*?

MR. KENNEDY: I think it would. Well, Your Honor, I raise the issue because that is -- would be substance -- that would part of what is on appeal, the substance of the award. Adjusting that now when it could have been done at the confirmation process time, they're just too late at their best point.

THE COURT: Okay. So is your --

MR. KENNEDY: And they waived it by not asking for it. And the difference, Your Honor, by the way, is when we moved for confirmation in 2019, we specifically asked as part of the confirmation process.

THE COURT: Right. Yeah, you did. Okay. So is your

contention that absence of an entitlement by right to post-judgment interest -- excuse me, that there is not an entitlement to post-judgment interest by right, it had to be specifically asked under *Mausbach* because there's nothing that specifically addresses an arbitration award is entitled to?

MR. KENNEDY: I believe that --

THE COURT: Is that --

MR. KENNEDY: Your Honor --

THE COURT: your waiver concept? That's what wasn't clear when I read the papers if you were saying that they had to or that they affirmatively waived.

MR. KENNEDY: Your Honor, I believe once this Court has confirmed, that will be -- again, our position is that became an enforceable order. I don't know if anything in Nevada law can say their interest would not run as of the date you confirmed. I don't -- I'm not aware of any law that says you must give them interest pre confirmation post arbitration award. *Mausbach* says you can. It doesn't say you must.

And the point there is, Your Honor, I think they need to ask for that, and they're not entitled to it as a matter of right. And even if you are entitled to it as a matter of right, if you don't ask for it, you can waive that. And the time to have asked for that was during the confirmation process and certainly before an appeal was filed. It's not like we timed the appeal. We filed the appeal when the time said we had to file the appeal. And that's the sum and substance of our argument on

that point, Your Honor.

Now, turning to attorney's fees, Your Honor, I don't know how many -- it doesn't really matter how many times they want to parse words. The law and the choice of law isn't a matter of happenstance about what cite -- what party cites. It's a matter of -- it's an issue of law. And it is not decided by what you cite. By the way, in 2019, both sides, and we pointed this out to the Court, cited to Nevada Statutes and to the Federal Arbitration Act. Mr. Bidsal argued the FAA controls all of this and controls, specifically, the award of attorney's fees. We didn't think so. We were wrong. The Court ruled against us and said, no, the Federal Arbitration Act controls this point. Mr. Bidsal was correct, and the Supreme Court said that we were wrong on that point. The FAA controls.

So the idea that, okay, if you use any Nevada cite, suddenly that creates a right to the fees under Nevada Arbitration Act, that's not really the case. And, really, I think it answers the question if you go to Mr. Bidsal's opposition in this matter --

THE COURT: Okay. Let's see what you're going to point me to.

MR. KENNEDY: -- it's Appendix 270, Subsection 3, Subsection B. "As was found in the" -- and I'll just read from it, Your Honor. "As was found in the confirmation order, the parties agreed the Court's decision to vacate the award is properly governed by the United States Arbitration Act, U.S.C., Section 9.

And of course, the contract here hasn't changed. The

contract -- the operating agreement says the FAA shall govern. That has never changed. And that was exactly what Mr. Bidsal argued in the 2019 case, both before Your Honor and before the Nevada Supreme Court. In fact, in their appellate briefs, they said, it doesn't matter what people cited. The contract says FAA governs this. And they cite again in their counter motion to -- in their countermotion to confirm in opposition again, again page 24 of that brief, 273, legal standard. They cite exclusively U.S.C., Section 10.

Next page, legal standard on modifying and correcting the arbitration awards, they cite to 9 U.S.C. 11. They do not cite to any Nevada Statutes. And, Your Honor, remember, Bidsal won this back and forth. They got confirmation. So when now they're coming to the Court and asking the Court, hey, I want to not be governed by the FAA that I just told you covers all this, I want to be covered by Nevada Statutes, it's what they argued, not what the CLA argued that matters here. They're the prevailing party, and they were the prevailing party back in the 2019 case.

And look, Your Honor, you could use it under -- you could certainly do it under judicial estoppel. You could certainly do it under law of the case, or if the Court wanted to, it would also be issue preclusion under *Five Star Capital Star Capital v. Ruby,* 124 Nevada 1048. All of those factors apply. The legal question is the same. The law controlling any post arbitration award of fees, it's the same. Same contract. In fact, it's the same dispute, ultimately.

THE COURT: Okay. You just said -- the reason why I'm

stopping for a quick second is for a point of clarity, because I just heard you say post arbitration award of fees. So here's what I need some clarity on because it was -- sorry, nice briefing, but it wasn't as clear. The argument is that 38.243 allows attorney's fees for the arbitration proceeding and what's happened here in the Eighth Judicial District Court, or if the request is purely for what has happened here in the Eighth Judicial District Court to confirm Judge Wall's March 12, 2022. Can you just give me a clarity?

MR. KENNEDY: Sure, Your Honor. Our opposition is against their request to add additional fees beyond what Judge Wall ordered in the arbitration, which is based upon their submissions, only activity that happened in this Court. And again, what we are looking at is what they argued before successfully, it's the FAA that controls. We were wrong on that issue and now we would like to have uniformity of the law being applied.

THE COURT: Then what do I do with the fact that the parties, in open court, in respect to the Wall March 12, 2022, said that the analysis would be the same regardless. And with respect to the 2019 *Haberfield*, that was not the contention. Was that a -- should the Court be viewing the statements of counsel meaning that this Court should also be taking into account NRS 38.243 when looking at the attorney's fee component for the Wall one. But since that was not contended with regards to Haberfield, then I shouldn't have look -- well, the Supreme Court said I shouldn't, so I'm already past that one, but, okay.

MR. KENNEDY: Well, Your Honor --

THE COURT: I mean, do you see a distinction is another way of putting it?

MR. KENNEDY: Your Honor, what I see is -- what I understood the Court was asking is like before, does the choice of law in terms of vacating or confirmation matter here? That's the question I was answering when I said the outcome isn't relevant. The choice of law, the outcome is the same. It was not trying to answer a question of what specific law governs because from just simply an efficiency point of view, the analysis would be ultimately the same. Maybe the words used a little bit different, but ultimately the outcome would be the same regardless. It was to avoid having to get into that issue, not a concession that one law applied over the other.

And as to attorney's fees, Your Honor, of course it was made in the context that that issue had already been decided in this case, by multiple -- by yourself and by the Court.

Your Honor, at the end of the day, it would be astonishingly unfair to have one rule of the decision apply to deny fees in an arbitration proceeding under the same contract for arbitration, the same provision that says the FAA governs and, you know, went on appeal and was affirmed when that was denied, as the FAA applying, and then to say, well, same contract. It's actually the same case and controversy ultimately, because it's still the same transaction that's being litigated. We changed arbitrators and now the law changes -- the applicable law changes because of that. That would be a decidedly unfair outcome to have totally different results in that situation.

And their only argument is, again, to parse through and choose and , you know, and say that party gets to choose the rule of decision by simply arguing different law. That's not the law, of course. It merely suggests that the law -- when you cite a statute as applying, that's merely a suggestion is what applies. It's for the Court to decide that law applies, ultimately. That's a question of law.

And then again, you know, let's look to Bidsal's papers here. They were citing the FAA in all of their papers before this Court in this proceeding as providing the rules of decision. That is just like it ended up in the prior proceedings saying, hey, you didn't think the FAA didn't matter when you were arguing before it on confirmation. And that's really what it said -- what was going on there. But the fact of the matter is the law is a -- the rule of decision shouldn't change from that matter to this matter. There's no reason it should.

Now, Your Honor, you know, if the Court is inclined to entertain that issue, you know, obviously -- again, we think that would probably justify a Rule 60 motion in the other so we could get our fees. But I don't think that's necessary. I think the Court should apply the same rule of decision here.

We have cited our objections to the fees they are claiming. You know, and the main point we have is there was a lot of work that they're claiming that was done in the 2019 case that they want to be compensated for here. We think that's inappropriate.

As for redactions, Your Honor, absolutely, we're not asking to see the redacted materials. But it is the case when you redact to

protect privilege, you need to leave enough or give some information so we can figure out what was being discussed, at least in a general term, so we know whether it's applicable and whether it's recoverable. When you choose to redact, if you redact too much, we can't determine whether those fees were appropriate. And there was a lot of time, again, Your Honor claimed for the 2019. We don't believe that's appropriate time, Your Honor. We've cited our objections. I'm not going to go through them all, Your Honor. You've gone through countless motions and objections to fees. I'm sure Your Honor doesn't need me to go through all the standards and that sort of thing.

If you have any questions, Your Honor, I would be happy to answer them.

THE COURT: No, I'm going back and looking at just for clarity again the Nevada Supreme Court order and 804427 relating to 795188, because I do remember -- I appreciate you all keep on saying last proceeding. Remember, these are two separate case numbers that coincidentally, I randomly got the second one. Randomly got the exact same one back in this Department of all the different departments it could have been. So I'm just going back to reread that for a quick -- with regards to -- I might have a question because there was something in that order I was going to ask. What my question is, and it goes to both of you all's arguments, footnote one in the Nevada Supreme Court's order affirming me in the 795 case, "the party's agreement incorporates the Federal Arbitration Act, FAA standards for [indiscernible], but does not specify whether the FAA standards also apply to judicial review of

the arbitration award, period. However, Bidsal and CLA both agree that if judicial review is permitted, the FAA should govern, period. Thus, we review the District Court's confirmation of the arbitration award under the FAA." Do you think that footnote impacts your arguments to the court today?

MR. KENNEDY: It only supports my arguments, Your Honor. Because, again --

THE COURT: I'm going to ask the exact same question to opposing counsel.

MR. KENNEDY: -- in a proceeding on the same legal issue, let the law govern the order of attorney's fees under an arbitration, under this operating agreement contract, CLA, in order to win on that issue in the Supreme Court, affirmatively agreed the FAA governs here. They're bound by that, Your Honor. That would be -- that absolutely would be judicial estoppel. And they agreed that the FAA governs, and the Supreme Court said, because the FAA nor the agreement authorized -- nor the agreement authorized an award of arbitration attorney's fees, the District Court did not abuse its discretion in denying our motion.

So it only supports our position, Your Honor, that that issue has been decided. CLA, when it would be the one writing the check, it's all FAA all the way. When it wants to get the check, it just changes position. The law doesn't allow that, Your Honor. Thank you, Your Honor.

THE COURT: Thank you so very much. Okay. So, counsel, you know I'm going to ask you the exact same question about footnote

1, and you can address it.

MR. SHAPIRO: Yeah, right there.

THE COURT: I can ask you at the end, no worries, whenever you'd like. Go ahead.

MR. SHAPIRO: Your Honor, footnote 1 says -- you read it. It's on the record. But I would note that it says, Bidsal and CLA both agree that if judicial review is permitted, the FAA should govern. Judicial review is substantive law, so the FAA governs. Confirmation is not governed by the FAA. That is governed by the NRS. Your Honor -- and every other district court here in Nevada lacks authority. The Federal Arbitration Act does not vest the Court with any authority to confirm anything. The only authority that the Court has is NRS 38.239.

THE COURT: Counsel, in fairness to you, page 4 references footnote 1. So when I was hearing footnote 1, I was taking into account page 4 of the order, and it's incorporation --

MR. SHAPIRO: Okay.

THE COURT: -- of footnote 1. So if you need a second -- I'm not sure if your answer was taking into account what the Supreme Court said on page 4 or not.

MR. SHAPIRO: Well, I'm going to get to page 4.

THE COURT: Okay. No worries. Go ahead.

MR. SHAPIRO: So, yeah -- in fact, that's where I was going next.

THE COURT: Okay.

MR. SHAPIRO: If you turn to page 4, it says, "CLA argues that

the District Court abused its discretion by not applying NRS 38.243 as the basis for awarding attorney's fees and costs. We disagree. As the District Court found, CLA cited to and relied solely on federal law when it filed its petition for confirmation of the arbitration award.

THE COURT: That's the next sentence.

MR. SHAPIRO: "Moreover, the parties agreed that the FAA governs judicial review of this arbitration award." Again, there's a distinction between judicial review and confirmation, and the Supreme Court is acknowledging that distinction. Confirmation -- the process of confirmation is brought under NRS 38.243. Judicial review, which is the substantive law, is handled under the Federal Arbitration Act. And the key thing is, as the Supreme Court said, when CLA cited to and relied solely -- I'm sorry, Your Honor.

THE COURT: She would like to keep her hearing. Thank you.

MR. SHAPIRO: And Your Honor, I've been in front of you a lot, so, you know I get excited and start speaking loud. So, thank you.

THE COURT: I know, it's why I nicely just kind of said this -- I do it multiple times a week. Go ahead, please.

MR. SHAPIRO: As the District Court found, CLA cited to and relied solely on federal law when it filed its petition for confirmation of the arbitration award. That's the difference. That's what it comes down to. What did the parties cite and rely upon when they filed their pleadings? In that action, they cited and relied solely upon federal law. This is different. You look at CLA's pleading, they specifically reference NRS 38.241 in the initiating pleading of the present action. Mr. Bidsal in

his deposition and counter motion, Doc ID 29, there's a whole paragraph that talks about the application of NRS 38.

And so, unlike the pleadings that were in front of the Court when the Court issued its prior order and when the Court found that CLA cited to and relied solely on federal law when it filed its petition for confirmation and arbitration award. That's not the case here. The case is both CLA and Bidsal cited and relied upon NRS 38. Because both Bidsal and CLA cited and relied upon NRS 38 in this action, NRS 38.243 applies.

Now going to --

THE COURT: I'm going back to look at the document. Go ahead.

MR. SHAPIRO: Okay. Your Honor asked a question under NRS 38.243, and you said, does this apply? Do the attorney fees that we're seeking apply to anything that occurred with Judge Wall, or is it post Judge Wall? And the answer is it's post Judge Wall. It would only be attorney fees that were incurred in the confirmation process and in the process of opposing CLA's motion to vacate made under NRS 38.241.

And so those are the attorney fees that we are seeking. It has nothing to do with the attorney fees that either were awarded by Judge Wall or could have been awarded by Judge Wall. Obviously, Judge Wall couldn't award attorney fees in the future because it hadn't been incurred. And so the March 12th, 2022 date, it would only be attorney fees after March 12, 2022.

Now, I find it interesting that after their vociferous opposition

to our motion to reduce Judge Wall's final award to judgment, that they now ask the Court to do so if there's confusion. Well, clearly there is confusion. And Your Honor asked the right question, which is, can they take Judge Walls March 12th, 2022 order and get writ of execution? And the answer is no, we can't. And so it does need to be reduced to judgment. And here today, Mr. Kennedy agreed that it needs to be reduced to judgment. And so at this point the parties agree, and it should be so entered, which is consistent with NRS 38.243, that makes it mandatory.

As far as the interest, Your Honor noted that in the *Mausbach v. Lemke* decision that the Supreme Court was dealing with a statute that had been overruled, I want to address that. The statute that was overruled was NRS 38.215 and that was repealed. But the statute which the Nevada Supreme Court was discussing that dealt with interest was NRS 17.130 and that's the same statute that has not been repealed and that's the same statute that we are asking be enforced.

And in fact, again, Mr. Kennedy said that his opposition was semantics. We were saying pre -- I don't remember the -- prejudgment interest. And he acknowledged here today that whether or not we were using the correct term, the interest would be appropriate from the date that Judge Wall entered his order, which is March 12th, 2022, forward under the *Mausbach v. Lemke* decision. However, he argued that somehow -- without citing to any legal authority, somehow we waived the right to get interest.

THE COURT: Well, isn't his argument basically that you

wouldn't -- since the statute doesn't say on its face that you get interest in confirming awards and if the reliance is on the NRS and on *Mausbach* to the idea that the Court -- *Mausbach* doesn't say the Court must, right. It has a -- nothing, we're saying precludes. So it's not mandatory language.

MR. SHAPIRO: Yeah.

THE COURT: So if it's not mandatory language, it really looks to -- then you look to see if there's anything that says mandatory. There's nothing mandatory in 38 that directly address interest, right? Its plain language does not even have the word interest. It says -- well, of course, let me stop, because the Court has a little bit different view. It does not have the specific word "interest." It has other languages you all are arguing may or may not apply to the concept of interest. You both agree that interest -- and whether it's March 12th, the date of the award, or it's March 23rd, the day the award was served, realistically, you're talking eleven days there in 2022. Stay tuned for that one.

But what it seems to be is that the contention is since this is not a matter of right, you have to ask for it. And so I think counsel stated that he was saying that you didn't ask for it in your pleadings before this Court, before you got the confirmation order. So how can you ask for it now?

MR. SHAPIRO: Because it hasn't been reduced to judgment. All that's been happened is that the award was confirmed, but it hasn't been reduced to judgment. And that, therefore, there's nothing in any of the legal authority that Your Honor has considered here today that says

you can't award it.

THE COURT: I think the difference is can't or -- I mean, is it mandatory you're asserting discretionary --

MR. SHAPIRO: Oh, no, it --

THE COURT: -- or is it precluded? All right. Those are the -- it seems to be the three options that you all are having a difference of viewpoint on. I'm not taking a viewpoint at this juncture. But isn't that the three differences that may exist between the two of you all?

MR. SHAPIRO: Well, yeah. There is no authority directly on point that says you have to. That is true. Because NRS 17.130 doesn't directly apply, although it does -- the Supreme Court has made it apply in the *Mausbach* decision. But you're right, that is not a dictation or a mandatory obligation of the Court. It simply says the Court can.

THE COURT: Dicta isn't really in *Mausbach* because it's saying --

MR. SHAPIRO: I didn't mean dicta. I mean, it's not a direction. I used the wrong word. My apologies.

THE COURT: Okay.

MR. SHAPIRO: But at the end of the day, when we are seeking to reduce it to judgment. That's the appropriate time to address the interest. And there's no case law that CLA has pointed to or cited the Court to or that has been discussed here today that says that if we don't ask for it as part of confirmation, that it's somehow waive. That simply does not apply. And they haven't identified anything that would say that we can't ask for the interest simply because it wasn't addressed by the

Court as part of the confirmation award.

The last thing I would cover, Your Honor, I think I've covered everything. Unless you've got some questions that I haven't answered. I was writing notes and trying to make sure I covered everything.

THE COURT: I am going to have one.

MR. SHAPIRO: Okay.

THE COURT: Because preparing for today and reskimming the underlying motion that started this action, realizing that you all didn't know which judge you would be in front of, in fact, you weren't initially in front of this Court, I see in the titling, it says NRS, right. And I see that that's a statement for venue being proper because the arbitration was there.

What I didn't see is that there was an affirmative statement that the proceeding -- okay, rather than just the venue being appropriate right here in this Court because it was Las Vegas for the confirmation, right, which is another part of 38, it appears you're contending that that turned this into a substantive determination for the attorney's fee component under 38. And I was trying to see where you were saying that happened. Is it the mere fact that it's in the caption, the venue and the citation of it?

MR. SHAPIRO: Well, there's two basis for that, Your Honor. The first is that in their initial petition -- I mean, right in the caption, they identify that as the primary basis upon which they're seeking to vacate the order. In our pleading, we do go into NRS 38.244 and identify that that is the jurisdiction of the Court, but the jurisdiction of the Court is

vested by the same statute. I don't know how you could say that NRS 38.244 applies, but NRS -- the statute that governs attorney's fees doesn't apply. I mean, they both -- either they apply, or they don't. But I would also point, Your Honor, to page 6 of our reply. And in it at page 21 of the countermotion, Bidsal argued that the Court's jurisdiction to confirm and enter the judgment of an arbitration award rises under NRS 20 -- or 38.206 to 243, inclusive.

THE COURT: Madam Court Reporter is going to tell you in just a second, if you keep flipping papers near the microphone, she's going to ask you to do it a little farther away. Is that the look I got, Lara?

THE COURT RECORDER: Possibly, yes.

THE COURT: That was the look I got. I thought so.

MR. SHAPIRO: Okay. So in this case, I don't know -- NRS 243 is very clear. NRS 243 says that on application of a prevailing party to a contested judicial proceeding under NRS 38.239, 241, or 242. If NRS 239, 241, or 242 applies, then the attorney fee provision applies. And when you look at CLA's motion, right in the caption itself, it says, motion to vacate arbitration award, NRS 38.241. That in and of itself is enough to trigger NRS 248.243, sub 3.

As far as the amount of the attorney fees, Your Honor, they argue that there was insufficient information in there to be able to ascertain whether or not it was justifiable or reasonable. At the end of the day, we are not asking for any attorney fees that are not related directly to case number A 22-85413-B, I guess. It used to be J, now it's B. Everything we are seeking is related to that action, and we appropriately

redacted communications that are privileged. And, you know, Your Honor has the ability to make decisions about how much of an award would be appropriate.

THE COURT: Okay.

MR. SHAPIRO: Unless Your Honor has any other questions.

THE COURT: I do not.

MR. SHAPIRO: Okay. Thank you.

THE COURT: Okay. So first part, reducing it to judgment. Realistically, based on what I've heard in oral argument it seems uncontested and the Court need not rule. So that would be granted as now uncontested between the parties. To the extent that that was not an express lack of contesting, then I'm going to rule that under the plain language of 38.243, well, it is proper to reduce it to judgment. That part is taken care of.

So next part is the attorney's fees component. The attorney's fees component is kind of a two pronger there. One this Court really does find you've got issue preclusion, you've got a five star case, because here's what you have. You have a Supreme Court order, I'm referencing footnote 1, but it's in the direct part of the order as well, page 4 and other portions thereof, is that that -- and here's where -- you all argued it to me for the 2019 795 case, what it was. Until these present pleadings, it was never contested. It was just a mere mentioning of NRS 38.243 to say it's jurisdictionally appropriate here in the Eighth Judicial District.

Because realistically, what 38 does, is it says -- it has to give

you some -- place some venue, right? Is it California, is it Oregon, is it Texas, is it, I don't know, pick your favorite state, right? But the reason why I mentioned California first is because of the nature of some of the agreements. But no, it's here in Clark County. So the mere mention -- and going back and I actually read it again here in Court, and I'd read it in preparation, just putting it in the caption to show this a venue and then making it clear in the preceding -- the introductory paragraphs the venue there was not an argument that somehow that provision rather than what it had previously been done -- in fact if you look at underlying -- what initiated the current case, right, the 854 as 854413, I'll use all the digits, is both sides agree with a long history of what already had existed. You went back to Haberfeld, went back to Wall. You went back to Judge Kishner, i.e., me in that context, and nobody said, this case is different. Now we are seeking something different than what the Supreme Court already had said what the scope in the agreement of the parties was, and that was that it is the FAA.

So this Court doesn't see how merely mentioning for venue purposes in the initial pleading, even if it's put in subsequent pleadings in this case, somehow that changes what the Supreme Court has already said, which is that neither the operating agreement or other aspects would be under Nevada. They were under the FAA, as agreed to by the party. Well, I appreciate the distinction between the substantive law and the attorney's fee component that's being asserted under 38.243.

The Court doesn't see that there is a distinction because the Nevada Supreme Court, I viewed their order, took care of it in both

contexts. Because if it was viewing them completely differently, then the way you look at page 4 would have been different. But it says -- it does both concepts, both the substantive as well as what would be addressed for the attorney's fees component, because there it even said that while the situation was flipped, it said that Bidsal was relying on 38.243 with regards to some of the aspects with regards to the attorney's fees, and the Supreme Court rejected it.

So this Court has to take the whole totality of what was the scenario when this case was filed, how was this case filed, articulated until I appreciate the present motion. I mean, that's why I was asking so many questions during oral argument. You all sounded really good, but you have to go back to what actually was the scope of this case. So the Court does not see that it would be appropriate to award attorney's fees. The Court, consistent with what's showing in 795, consistent with the Supreme Court order, would find that the FAA governs. The FAA does not allow for attorney's fees.

The Court does not find that the mere mention of the NRS or the way it was mentioned to establish the jurisdiction of the Court to hear it, as well as cited in the pleadings for both pleadings, both CLA and Bidsal prior to the instant motion somehow changes that. And because it's asking for a confirmation to judgment versus the prior confirmation, which was an order, which is interesting enough -- we're about to read 38.243, because remember, upon granting an order confirming vacating without directing a rehearing.

So paragraph one talks about it being an order, right? And

then next part of that same sentence shall enter a judgment in conformity. So you've got order in one first part of it, and then you get judgment in the second part. So, realistically, the Court doesn't find that this proceeding would change the analysis and take it out of the FAA, which was the terms by which the parties operating agreement, the proceedings from Haberfield, although that's not pertinent really for this purposes, I'm just saying from a background purpose, but the proceedings before Wall and the proceedings before this Court, as set forth in the pleadings.

So, therefore, attorney's fees would not be appropriate. FAA, please see analysis prior case, both independently from what's here, but also in addition, I really see it as issue preclusion.

So then we go the next step, interest. Realistically, interest, I do not see that interest was waived. I would take the same analysis that realistically, you're looking for the same thing pretty much I just said with regards to attorney's fees, but keep it with regards to the consistency is where I'm going. I'm saying same thing is consistency here. Understanding is that realistically, there was going to be interest. You already had already just gone through this in 795. I don't see any express waiver. I don't see that there's any language that says there needs to be specifically asked in the absence of it. And what I really have is the *Mausbach* case, which you all both cited, right? Since we keep on mentioning it, I'm going to 866. P2d. 1146, *Mausbach M-A-U-S-B-A-C-H versus Lemke L-e-m-k-e*.

Okay. I want to make sure we have it. And if you look in that

case, as you all each quoted, right, and it cites to *Creative Builders* for its citation thereof. Remember, as you both contended, is we note -- we note, right. So realistically, that's not the affirmative ruling because it says that we have said nothing. Well, if they haven't said anything, then that's not an affirmative ruling. But it says, we note that we have said nothing. That would preclude an arbitrary from expressly providing for prejudgment interest and award. Well, that doesn't apply here, okay, nor does our ruling preclude the District Court from awarding post judgment interest commencing from the date of the entry of the award itself.

So when I look at that, it's discretionary. It's discretionary, and it doesn't say it must specifically be requested versus that it can just be awarded by the Court. And then you take the language of 38, and you go back to the language of NRS 38, and upon the granting, right, the court may allow reasonable costs of the motion and subsequent judicial proceedings, on the application of the prevailing party to contested judicial proceeding. The Court may add reasonable fees -- well, we've already gone that concept.

But realistically, there's nothing that is precluded by having an analysis under the FAA, as the Court just stated with regards to attorney's fees, that in this Court, looking at it, that under *Mausbach* -- now, I am appreciative that *Mausbach* was a court annexed arbitration proceeding. It wasn't a party pursuant to an operating agreement FAA proceeding, but the concept of an arbitration proceeding and then coming to a judicial proceeding, really, the Court sees similar.

The Court finds that the award of post judgment attorney's

fees is appropriate. The Court finds it should be from March 23, 2022, not March 12, 2022, because no one was on notice. You all agree it wasn't served, so it might be dated a particular day. But once again, remember, you have to look at the entry right, the entry date. So that's why the court would go from March 23, 2022, with allowing the post arbitration award notification interest consistent with its prior rulings in 795 case. So that takes care of all of those factors, all three prongs.

So now the next part is I was supposed to start a jury trial at 9:30. Realistically, with regards to the motion, I know you want to pay it. I mean, I've had an opportunity to look at it briefly between you all's arguments, but I don't have time this morning, and you can appreciate -- while I appreciate you might have emailed a courtesy copy. We never got it. Well, I'm not saying the email didn't get there. With the hundreds of emails that people send these days and not giving us a hard copy, one, right, less than 24 hours. Please look at the EDCR you can appreciate, particularly since I was in trial, otherwise I'd have a chance to look at, but I was doing trial, prepping for trial, and prepping for four days of motions in limine for next week. It really looks as an EDCR issue.

So I can give you another date. I can put it in chambers on Friday if you all wanted to come back, and you can do it remotely. I'm starting tomorrow at 9:30 in this trial. So I could take you again if you wanted am 8:30 tomorrow to argue it. If you're busy tomorrow, I could tell you that -- are you busy tomorrow? I saw --

MR. SHAPIRO: Yes, Your Honor.

THE COURT: Okay. No worries. I'm just trying to give you

some options here. Thursday we're not starting -- I've got other -- we've got five business court matters on Thursday, I think. Do I still have five business court matters on Thursday? We're starting at 10:00 on Thursday. My trial -- well, if you want 8:15 on Thursday, I could take you before if that meets both parties' needs? Are you here on Thursday mornings? If you want 8:15 on Thursday, if you want an oral argument or I put it on chambers. What do you want to do?

MR. KENNEDY: Your Honor, I could do 8:15 on Thursday.

MR. SHAPIRO: I can do 8:15 as well, Your Honor.

THE COURT: Okay. So 8:15 on Thursday? Realize you're going to have like, ten minutes of oral argument because then I've got business -- I've got other business court cases, and then I've got --

MR. KENNEDY: Understood, Your Honor. One point of clarification, so Mr. Shapiro and I know. Is the Court's contemplation of the judgment to be entered on the attorney's fees, hereby ordered, adjudged and decreed, judgment is entered on -- for this amount of money plus interest, or is it to have more than that in it? You're looking at me like I'm not clear, so.

THE COURT: No, no, no. Okay.

MR. KENNEDY: I just want to make sure, so we don't end up having a dispute and submitting competing -- you know, what was the Court's contemplation.

THE COURT: Tell me two minutes on what you're thinking.

MR. KENNEDY: I was thinking because the only thing outstanding because, obviously, the transaction closed, what really

they're talking about is judgment on the attorney's fees portion. It can be a very simple judgment that says judgment is hereby entered against CLA property in favor of John Bidsal for this amount -- this amount of interest, post arbitration award until the date of judgment and interest continues until paid. That would be very clear and easy.

THE COURT: That seems -- isn't that consistent with what you're asking for?

MR. SHAPIRO: Yeah. Yeah, it is.

THE COURT: Okay. The reason why I was kind of going -- it was, like, I thought you were all on the same page on that. That part was the simple part, but --

MR. KENNEDY: Okay. Well, sometimes I over --

THE COURT: It sounds like you all are on the same page.

MR. KENNEDY: -- complicate things, Your Honor.

THE COURT: No worries. Right. And maybe somebody has it even before Thursday, and maybe you want to look at if there's any issues, but got the 14 days under EDCR 7.21.

My only challenge on hearing what you're requesting on Thursday is, remember, you've got 14 days to get this order in from today's hearing. So to the extent if somebody is going to raise a *Division of Family Services* or *Rust v. Clark County* issue, that today's was an oral pronouncement from the bench rather than memorialized in writing yet.

And so, therefore, that I should not be having Thursday's hearing and telling me today versus you all showing up on Thursday and telling me and then addressing it then.

MR. KENNEDY: I think your Court's oral pronouncement of that -- of what's going to -- what the order of the Court is going to be clarifies the issues for Thursday's hearing and makes things a bit simpler.

MR. SHAPIRO: Our argument is primarily that it's an advisory opinion anyway. So it's going to be the same argument.

THE COURT: Okie dokey, then. So I just want to make sure there's reason to have you all show up to say something that you could say in one sentence here, right. Okay.

MR. KENNEDY: Okay. Thank you, Your Honor.

THE COURT: See you 8:15 on Thursday. Thanks so much.

[Proceedings concluded at 9:41 a.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-visual recording of the proceeding in the above entitled case to the best of my ability.

Jessica B. Cahill

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DISTRICT COURT

CLARK COUNTY, NEVADA

CLA PROPERTIES, LLC, Petitioner, vs. SHAWN BIDSAL, Respondent.	CASE#: A-22-854413-B DEPT. XXXI

BEFORE THE HONORABLE JOANNA S. KISHNER
DISTRICT COURT JUDGE
THURSDAY, MAY 11, 2023

RECORDER'S TRANSCRIPT OF PENDING MOTION

APPEARANCES

For the Petitioner TODD E. KENNEDY, ESQ.

For the Respondent JAMES E. SHAPIRO, ESQ.

RECORDED BY: LARA CORCORAN, COURT RECORDER

Case Number: A-22-854413-B

Las Vegas, Nevada, Thursday, May 11, 2023

[Case called at 8:07 a.m.]

THE COURT: Okay. Let's go to then page 1 please. Case 854413 CLA Properties v. Bidsal. Counsel, can I have your appearances, please?

MR. KENNEDY: Good morning, Your Honor. Todd Kennedy for CLA properties.

MR. SHAPIRO: Good morning, Your Honor. Jim Shapiro on behalf of Shawn Bidsal.

THE COURT: Okay. So, welcome back, counsel. As you know, today is the CLA's motion to approve payment of fees award in full and for order preserving appeal rights as to fees and right to return if appeals succeeded on order shortening time.

Okay. Let me give you the Court's inclination, unless the parties have resolved it, but if you resolved it, I presumed I wouldn't be seeing you.

MR. SHAPIRO: Right.

THE COURT: Is that correct?

MR. SHAPIRO: Correct, Your Honor.

THE COURT: Okay. The Court's inclination is to deny it, realistically, because, as pointed out in the opposition, there is case law, rules, provisions on how the process is to be when somebody has an issue with regards to a ruling or determination, the opportunities with regards to whether or not appeals and supersedeas bonds or other

processes. And so the Court -- while I appreciate the creative approach for the benefit of a particular client, I don't see how there is any case law or rule that supports that a Court can order/mandate such a procedure versus if the parties had agreed upon a different issue, but they don't.

So that's the court's inclination. Counsel for movant, it's your motion. Go ahead, please.

MR. KENNEDY: Thank you. I understand the Court's inclination, so I'll just address that issue. You know, the one thing I didn't see in any opposition was Mr. Bidsal acknowledging that if we pay it after judgment has been entered, obviously, that issue in terms of, hey, there's no judgment here. That's been resolved by the Court. It's going to be a judgment.

THE COURT: That's why the Court didn't go through that in its inclination, I figured that's old news.

MR. KENNEDY: Yeah. You know, whether there's a case or controversy, there's obviously a dispute. Obviously, courts do have the ability to resolve disputed issues, for example, declaratory judgments. And what we did not see is an express acknowledgement that, hey, if this is paid, it is paid under -- coercive under this case law. We did not see an acknowledgement that it would have to come back if we were prevailing on the appeal.

I think that's intentional, Your Honor, which is an expression that there's going to be an argument later that somehow they don't have to give it back if we prevail on the appeal, or there's going to be an argument that somehow we've waived things on appeal. So that's why

-- one reason why we believe that there is a case or controversy hear. The idea of advisory opinions, when you look at the Supreme Court, when they talk about it, it's when something is moot or there isn't an existing case or controversy. Well, we have an appeal. We certainly have a case here. We have a judgment that's going to be entered for attorney's fees. It seems that there's real issues that can be decided. And, of course, this is no more advisory or lacking case or controversy than the entire second arbitration, which was commenced by Mr. Bidsal and proceeded only having relevance if he lost his pending appeal of the first arbitration.

So it seems, you know, ironic, I guess -- that's the word that -- that there would be a complaint now that -- somehow asking for clarity so the parties know what they're doing, and they know that they are fall fully within that case law, as opposed to having to guess. With that, Your Honor.

THE COURT: Sure. But walk through what you're requesting, right. I mean, when -- there are these processes, right. There's these mandated procedures that gives you, you know what, a couple of different options. They're kind of asking this Court to create a new option. And I appreciate that part of the argument in the opposition was that this was an advisory opinion. It wasn't right. But the other one was basically there's a process --

MR. KENNEDY: Well, Your Honor --

THE COURT: -- and the movant would have to follow the process, you see. And that's really where this Court comes up, because

the judgment issue -- it is what it is, however you call it, an order or a judgment because, like I said, as you know the particular provision said both. But that being said, how can this court create a new process when there are established processes that your client can follow?

MR. KENNEDY: Well, Your Honor, the *Wheeler* case makes it clear. You do not have to seek a stay. It's permissive. The *Wheeler* case could not have turned out -- the parties there, no one sought a supersedeas stay, that was not necessary to be entitled to the benefit of still being able to pay. The real question here is, is it coercive when we pay it? And that is an issue of and as the Court said, well, if you're not trying to settle, you're not trying to compromise, are you paying it because there is a potential for execution?

Mr. Bidsal has made it very clear in his papers. He made it very clear at the last hearing he wanted an entry of a judgment because he wanted, what he believed, was an executable order. I think that's now very clear on the record that there is -- once that judgment is entered, there is the potential for execution.

All we are asking for is for the Court to make sure that what we're saying is we do not want to have a disputed fact over that issue later on down the road when we pay this and have Mr. Bidsal be arguing on appeal, no you don't have an appeal right, because you have a dispute between the parties on the fact of whether it would be coercive or not. And, ultimately, once it's established, hey, you're paying us because there's an executable judgment going to be entered, and that's enough under this case to make it coercive as opposed to a settlement or

compromise. Well, that resolves, and *Wheeler* will control it.

THE COURT: Okay. I appreciate it. Thanks so much. Counsel?

MR. SHAPIRO: Thank you, Your Honor. The problem is it's all hypothetical. Unlike a declaratory relief action where the Court is asked to interpret past events or existing documents, they're asking the Court to give an advisory opinion on a hypothetical set of facts. No payment has been made. They have offered to pay the face value, which is not the amount due and owing. I don't even know what they're asking the Court to order because they're saying if we make a payment -- well, they haven't identified the amount of that payment. They haven't identified when that payment is going to be made. They haven't identified anything.

They just want the Court to give a hypothetical advisory opinion that says, hey, if you make some payment in some amount, then you get some protection. That's specifically not allowed. It's an abstract question which is specifically referenced in the *Applebaum* case. And as Your Honor has pointed out, there are procedures that are in place that give CLA Properties the protections that they seek, and it would be inappropriate for the Court to issue an advisory opinion or to create some new method of moving forward. That's not the Court's role. That's the legislature's role.

THE COURT: Okay. You're going to get the friendly reminder today, but please don't do it again. EDCR 2.27 exhibits. You have 150 page document with -- if you want the Court to read it, if you

want the Court to pay attention to it, right, you're supposed to have compliance with the rules. Otherwise we make it -- just go fish.

MR. SHAPIRO: Okay.

THE COURT: So please do not, okay.

MR. SHAPIRO: Thank you.

THE COURT: Okay.

MR. KENNEDY: Your Honor, if I may, one quick comment?

THE COURT: Of course, yeah. I mean, you get last word on just --

MR. KENNEDY: It's just not correct what counsel is telling you in terms of we are making some speculative -- our papers make it very clear. We want to pay whatever the judgment was. And, of course, when we filed this, the issue of interest had not been determined. It says in full, every penny the Court says they are due, that's what we're proposing to pay. We didn't know that until Thursday that there would be interest in that. We didn't know whether there would be additional attorney fees. But the purpose of that is simply not a speculative issue. Thank you, Your Honor.

THE COURT: The Court's going back in light of your updated arguments with where the current status of the case is. The court pulled up again, as it prepared for today, the *Wheeler Springs* case that was cited, right. And I'm seeing -- okay. Still the Court is going to have to go for its inclination, but I'm going to modify it a little bit.

In relooking at *Wheeler Springs*, remember, *Wheeler Springs* was starting the execution, right. The appeal had happened, and then

starting the execution, and then there was payment, right. And then there the Supreme Court said, "Wheeler Springs timely filed this appeal. The tenants garnished Wheeler Springs' accounts to enforce payment of the judgment. To stop the garnishments, which could have adversely affected its ability to secure credit, Wheeler Springs paid the outstanding balances owed on the judgment. Thus, Wheeler Springs payment of the judgment was not intended to compromise or settle the matter; rather, the record indicates that the tenants garnishment of Wheeler Springs' accounts coerced payment. In light of our holding above, we conclude that Wheeler Springs did not waive its rights to prosecute the original appeal when it paid a judgment. Accordingly, the issue on remand and in this appeals are not moot," right.

So, realistically, what I'm going to add to my inclination, turning it into an order, I need to deny this because, realistically, the issue being presented to this Court I do see as an advisory opinion, because what is the Appellate Court -- whether this goes to the Supreme or whether it goes to the Court of Appeals, right. If it goes to the Appellate Court, what are they going to consider that payment to be, which is not yet made.

So there's two prongs of it. One, the payment hasn't been made. And so it's asking this Court to say what happens if we do pay in full. And, realistically, I don't see a distinction if the paid in full was with or without interest because it's the idea that the payment hasn't been made. And the second aspect of what's being -- the District Court is being asked is how will the appellate courts treat said payment?

Well, realistically, that argument is for whatever appellate court ends up handling the matter if you utilize that option. And the reason why is because you have to do the addressing of the facts, right? Whether it's the 2003 case 20 years ago and how that's going to be impacted and whether or not you're going to say it's coercion or it's settlement, et cetera, right. And those are all facts that have not yet happened, so the Court does see it advisory.

The second prong of the Court's analysis is the Court doesn't see that there has been a legal basis provided to this Court to grant the relief that is sought. When there are specific provisions in place that in a situation where an individual is deciding how they wish to deal with an order or judgment, it really is going to be both, right. So an order or judgment. There's procedures in place that allow a party to take a variety of different actions and do different things depending on what that particular party wants to do and how that party wants to proceed. And as it's not one of those mandated procedures, the Court does not see that there's legal support that would include what's being asked of this Court.

So two alternative bases. A, advisory opinion; B, there's not a legal basis. Although, like I said, I find it -- I'm not going to go to any dicta on how I find it. I just, you know, don't see the basis.

So, therefore, the motion is denied. It is so ordered. That means counsel for the non-movant, you're going to prepare the order, circulate it to opposing counsel, provide it back to the Court in accordance to the EDCR 7.21, to the DC 31 inbox according to the

administrative order. And whether you're doing these as two separate orders or one order, that's going to be you all's choice. Realistically, you --

MR. SHAPIRO: We'll do two separate orders, but I will follow that procedure. Thank you, Your Honor.

MR. KENNEDY: Thank you, Your Honor.

THE COURT: I do appreciate it. I wish everyone a great rest of your day, rest of your week. Thank you for coming in early so we could get you taken care of. Appreciate it.

[Proceedings concluded at 8:19 a.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-visual recording of the proceeding in the above entitled case to the best of my ability.

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DISTRICT COURT

CLARK COUNTY, NEVADA

CLA Properties, LLC, a California limited Liability company, Movant (Respondent in Arbitration) v. SHAWN BIDSAL, an individual Respondent (Claimant in Arbitration).	Case No: A-22-854413-B Dept.: 31 Date: May 9, 2023 Time: 8:30 a.m.

ORDER REGARDING BIDSAL'S MOTION TO REDUCE AWARD TO JUDGMENT AND FOR AN AWARD FOR ATTORNEY FEES AND COSTS

and

JUDGMENT

THIS MATTER having come before the Court on SHAWN BIDSAL's ("***Bidsal***") MOTION TO REDUCE AWARD TO JUDGMENT AND FOR AN AWARD FOR ATTORNEY FEES AND COSTS (the "***Motion***"); Bidsal having appeared by and through his attorneys of record, SMITH & SHAPIRO, PLLC, CLA PROPERTIES, LLC's ("***CLA***") having appeared through its attorneys of record, KENNEDY & COUVILLIER, the Court having reviewed the papers and pleadings on file herein and having entertained arguments of counsel, the Court being fully advised in the premises, and good cause appearing:

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1. On March 20, 2023, the Court entered its Order Granting Bidsal's Countermotion to Confirm Arbitration Award and Denying CLA Properties, LLC's Motion to Vacate Arbitration Award, wherein the Court confirmed the Final Award issued on March 12, 2022, in JAMS Ref. No. 1260005736 (the "***Final Award***"). *See* Doc ID# 47.

2. On April 4, 2023, Bidsal filed his Motion, wherein he sought to reduce the Final Award to Judgment, for an award of interest from the date of the Final Award forward, and for an award of attorneys' fees.

3. With respect to the entry of judgment, the Court finds that while CLA argued that the Final Award was an enforceable order and therefore reducing it to a judgment was unnecessary, it is appropriate to reduce the award of attorneys' fees as provided in the now confirmed Final Award to Judgment.

4. With respect to the Motion's request that the Court award interest from the date of the Final Award, the Court finds that while it was not requested by Bidsal as part of the confirmation process there is nothing in the FAA or Nevada law that requires that he do so and his failure to do so was not a waiver. The Court has discretion to award interest to the date of the Award under *Mausbach v.* Lemke, 110 Nev. 37, 866 P.2d 1146 (1994) and the Court finds it appropriate to award interest at the legal rate[1] of interest from March 23, 2022 (the date the Final Award was served on the parties) forward, until paid in full.

5. As for the request for attorneys' fees post arbitration, CLA argued that in the prior district court proceedings involving the same parties and a first arbitration (Case No. A-19-795188-P) regarding the underlying membership interest transaction where CLA was the prevailing party, Bidsal successfully argued to this court and then the Nevada Supreme Court that the question of attorneys' fees was controlled by the Federal Arbitration Act ("FAA"), not the Nevada arbitration act, and that either under law of the case or judicial preclusion, the issue is decided, and Bidsal's request for attorneys' fees must be denied just as CLA's was denied in

[1] *See* NRS 17.130(2), 99.040(1), and Kerala Properties, Inc. v. Familian, 137 P.3d 1146, 122 Nev. 601 (Nev. 2006).

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Case No. A-19-795188-P. At oral argument, counsel for CLA also argued issue preclusion under *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 194 P.3d 709 (2008).

6. The Court as an initial matter finds that issue preclusion does apply to the question of post-arbitration attorneys' fees. This Court found in A-19-795188-P that the FAA governs this issue and there is no basis under the FAA to award CLA fees and costs for post arbitration proceedings, and the Nevada Supreme Court agreed. In that Supreme Court Order in footnote 1 but also in the body of the Order at page 4, that—as was argued to this Court in that proceeding--the FAA controls and that the mere reference of NRS Ch 38 was establishing venue and jurisdictionally appropriate to review the proceeding in the Eighth Judicial District. Until these proceedings, that was never contested.

7. NRS Ch. 38, what the provisions cited by CLA and Bidsal in the confirmation proceedings say, is to provide a place of venue. Hence, the mere mention, in a caption, of a NRS Ch. 38 provision to show that venue or jurisdiction here is proper does not transform a matter governed by the FAA into something else, as argued now by Bidsal. Indeed, looking back and the papers filed in this proceeding, both sides agree with a long history of what already had existed. They went back to Haberfeld, went back to Wall, referred to this Court's order in the A-19-795188-P matter, and neither side suggested during the confirmation process that this matter and this arbitration was different from the prior one. But now, Bidsal is seeking something different than what the Supreme Court already had said what was the scope of the agreement of the parties was: the FAA.

8. The Court does not view merely mentioning NRS Ch. 38 for venue purposes in an initiating pleading, even if put into subsequent pleadings in this case, changes what the Supreme Court has already said, which is neither the Operating Agreement or other aspects would be decided by Nevada arbitration statutes. Rather, they would be decided under the FAA, as agreed to by all parties . While the Court can appreciate the distinction between the substantive law and the attorneys' fees component being asserted under NRS 38.243, the Court doesn't see there to be a meaningful distinction because the Nevada Supreme Court's Order resolves the question

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in both contexts. It addresses the substantive as well as the attorneys' fees component, the Supreme Court rejected relying on NRS 38.243 for the question of attorneys' fees.

9. Independent of issue preclusion, this Court must take the whole totality of what was the circumstances, when this matter was filed, how it was filed and articulated and ultimately must go back to what actually was the scope of this case. Consistent with what this Court ruled in the A-19-795188-P matter, consistent with the Supreme Court's Order in that matter, which analysis applies equally to this matter, the Court does not find that it would be appropriate to award attorneys' fees, because it finds that this is governed by the FAA, which does not allow for further awards of fees in post arbitration judicial proceedings. The Court does not find that the mere mention of the NRS or the way that it was mentioned to establish the jurisdiction of the Court to hear it, as was as how it was cited in the pleadings from both parties, CLA and Bidsal, prior to the instant motion changes that, and therefore, the FAA governs the question of attorneys' fees and therefore the Court declines to award them under the circumstances of this matter.

NOW THEREFORE:

IT IS HEREBY ORDERED that Bidsal's Motion is GRANTED in part and DENIED in part, as more fully set forth herein.

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KENNEDY & COUVILLIER, PLLC
3271 E. Warm Springs Rd. Las Vegas, NV 89120
Ph. (702) 605-3440 FAX: (702) 625-6367
www.kclawnv.com

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that JUDGMENT is hereby entered, in favor of SHAWN BIDSAL and against CLA, PROPERTIES, LLC, a California limited liability company, in the amount of FOUR HUNDRED FIFTY-FIVE THOUSAND SIX HUNDRED FORTY-FOUR and 84/100s DOLLARS ($455,644.84), plus interest from March 23, 2022, at the legal rate of interest[1], until paid in full.

Dated this 24th day of May, 2023

Joanna S Kishner

91A 523 3035 BC47
Joanna S. Kishner
District Court Judge

Prepared and Submitted by:

KENNEDY & COUVILLIER

/s/ Todd E. Kennedy
Todd E. Kennedy, Esq.
Nevada Bar No. 6014
3271 E. Warm Springs Rd.
Las Vegas, Nevada 89120
(702) 605-3440
Attorneys for CLA PROPERTIES, LLC

Approved as to Form:

SMITH & SHAPIRO, PLLC

COMPETING ORDER
James E. Shapiro, Esq.
Nevada Bar No. 7907
3333 E. Serene Ave., Suite 130
Henderson, Nevada 89074
Attorneys for SHAWN BIDSAL

KENNEDY & COUVILLIER, PLLC
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05/24/2023 2:18 PM
CLERK OF THE COURT

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James E. Shapiro, Esq.
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Aimee M. Cannon, Esq.
Nevada Bar No. 11780
acannon@smithshapiro.com
SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, Nevada 89074
702-318-5033
Attorneys for SHAWN BIDSAL

DISTRICT COURT

CLARK COUNTY, NEVADA

CLA, PROPERTIES, LLC, a California limited liability company, Movant (Respondent in arbitration), vs. SHAWN BIDSAL, an individual, Respondent (Claimant in arbitration).	Case No. A-22-854413-B Dept. No. 31 Date: May 11, 2023 Time: 8:15am

ORDER DENYING CLA PROPERTIES, LLC'S MOTION TO APPROVE PAYMENT OF FEES AWARD IN FULL AND FOR ORDER PRESERVING APPEAL RIGHTS AS TO THE FEES AND RIGHT TO RETURN IF APPEAL IS SUCCESSFUL

THIS MATTER having come before the Court on CLA PROPERTIES, LLC's ("***CLA***") MOTION TO APPROVE PAYMENT OF FEES AWARD IN FULL AND FOR ORDER PRESERVING APPEAL RIGHTS AS TO THE FEES AND RIGHT TO RETURN IF APPEAL IS SUCCESSFUL ON ORDER SHORTENING TIME [Doc ID# 58]; CLA having appeared through its attorneys of record, KENNEDY & COUVILLIER; SHAWN BIDSAL ("***Bidsal***") having filed an Opposition thereto [Doc ID# 61] and having appeared by and through his attorneys of record, SMITH & SHAPIRO, PLLC; the Court having reviewed the papers and pleadings on file herein and having entertained arguments of counsel, the Court being fully advised in the premises, and good cause appearing:

\ \ \

\ \ \

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

The Court finds that CLA's Motion seeks an impermissible advisory opinion as the payment in question has not been made and as CLA is asking this Court to determine how an appellate court will treat the hypothetical payment, and the Motion should also be denied because the Motion fails to identify a legal basis on which the requested relief could be granted. Applebaum v. Applebaum, 97 Nev. 11, 621 P.2d 1110 (Nev. 1981).

NOW THEREFORE:

IT IS HEREBY ORDERED that CLA's Motion is DENIED.

Dated this 24th day of May, 2023

0AD E4D 7D5F 4C45
Joanna S. Kishner
District Court Judge

Prepared and Submitted by:

SMITH & SHAPIRO, PLLC

/s/ James E. Shapiro
James E. Shapiro, Esq.
Nevada Bar No. 7907
3333 E. Serene Ave., Suite 130
Henderson, Nevada 89074
Attorneys for SHAWN BIDSAL

Approved as to form:

KENNEDY & COUVILLIER

/s/ Todd E. Kennedy
Todd E. Kennedy, Esq.
Nevada Bar No. 6014
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Attorneys for CLA PROPERTIES, LLC

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39A.App.8895

James E. Shapiro

From: Todd E. Kennedy <tkennedy@kclawnv.com>
Sent: Tuesday, May 23, 2023 10:49 AM
To: James E. Shapiro
Subject: RE: CLA v. Bidsal - Proposed Order Denying Motion to Approve Payment

Jim, you have my consent to submit this order with my electronic signature.

-Todd

From: James E. Shapiro <JShapiro@smithshapiro.com>
Sent: Thursday, May 18, 2023 8:18 AM
To: Todd E. Kennedy <tkennedy@kclawnv.com>
Subject: RE: CLA v. Bidsal - Proposed Order Denying Motion to Approve Payment

Todd,

We're fine with most of your changes, but I did clean up some of the language. Attached are my proposed revisions to your last version. Please let me know if I have your permission to affix your e-signature and submit the same.

Sincerely,

James E. Shapiro, Esq.
jshapiro@SmithShapiro.com

SMITH & SHAPIRO
ATTORNEYS AT LAW
Main 3333 E. Serene Ave., Suite 130, Henderson, NV 89074
Office 702.318.5033 Fax 702.318.5034
Website smithshapiro.com

From: Todd E. Kennedy <tkennedy@kclawnv.com>
Sent: Tuesday, May 16, 2023 10:53 AM
To: James E. Shapiro <JShapiro@smithshapiro.com>
Subject: CLA v. Bidsal

On the CLA motion, attached please find a redline of our requested changes to that proposed order adding in from the transcript.

Todd E. Kennedy, Esq.
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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

CLA Properties, LLC, Petitioner(s) vs. Shawn Bidsal, Respondent(s)	CASE NO: A-22-854413-B DEPT. NO. Department 31

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order Denying was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 5/24/2023

James Shapiro	jshapiro@smithshapiro.com
Jennifer Bidwell	jbidwell@smithshapiro.com
Todd Kennedy	tkennedy@kclawnv.com
Aimee Cannon	acannon@smithshapiro.com
America Gomez-Oropeza	aoropeza@smithshapiro.com
Melanie Bruner	mbruner@rsnvlaw.com
Louis Garfinkel	lgarfinkel@rsnvlaw.com

Electronically Filed
5/24/2023 2:55 PM
Steven D. Grierson
CLERK OF THE COURT

NEOJ
James E. Shapiro, Esq.
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Aimee M. Cannon, Esq.
Nevada Bar No. 11780
acannon@smithshapiro.com
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3333 E. Serene Ave., Suite 130
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702-318-5033
Attorneys for SHAWN BIDSAL

DISTRICT COURT

CLARK COUNTY, NEVADA

CLA, PROPERTIES, LLC, a California limited liability company, Movant (Respondent in arbitration), vs. SHAWN BIDSAL, an individual, Respondent (Claimant in arbitration).	Case No. A-22-854413-B Dept. No. 31

NOTICE OF ENTRY OF ORDER DENYING CLA PROPERTIES, LLC'S MOTION TO APPROVE PAYMENT OF FEES AWARD IN FULL AND FOR ORDER PRESERVING APPEAL RIGHTS AS TO THE FEES AND RIGHT TO RETURN IF APPEAL IS SUCCESSFUL

PLEASE TAKE NOTICE that an ORDER DENYING CLA PROPERTIES, LLC'S MOTION TO APPROVE PAYMENT OF FEES AWARD IN FULL AND FOR ORDER PRESERVING APPEAL RIGHTS AS TO THE FEES AND RIGHT TO RETURN IF APPEAL IS SUCCESSFUL was entered on the 24th day of May, 2023, a copy of which is attached hereto.

Dated this 24th day of May, 2023.

SMITH & SHAPIRO, PLLC

/s/ James E. Shapiro
James E. Shapiro, Esq.
Nevada Bar No. 7907
Aimee M. Cannon, Esq.
Nevada Bar No. 11780
3333 E. Serene Ave., Suite 130
Henderson, Nevada 89074
Attorneys for Respondent Shawn Bidsal

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 24th day of May, 2023, I served a true and correct copy of the forgoing **NOTICE OF ENTRY OF ORDER DENYING CLA PROPERTIES, LLC'S MOTION TO APPROVE PAYMENT OF FEES AWARD IN FULL AND FOR ORDER PRESERVING APPEAL RIGHTS AS TO THE FEES AND RIGHT TO RETURN IF APPEAL IS SUCCESSFUL**, by e-serving a copy on all parties registered and listed as Service Recipients in Odyssey, the Court's on-line, electronic filing website.

/s/ *Jennifer A. Bidwell*
An employee of SMITH & SHAPIRO, PLLC

SMITH & SHAPIRO, PLLC
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05/24/2023 2:18 PM
CLERK OF THE COURT

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James E. Shapiro, Esq.
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702-318-5033
Attorneys for SHAWN BIDSAL

DISTRICT COURT

CLARK COUNTY, NEVADA

CLA, PROPERTIES, LLC, a California limited liability company, Movant (Respondent in arbitration), vs. SHAWN BIDSAL, an individual, Respondent (Claimant in arbitration).	Case No. A-22-854413-B Dept. No. 31 Date: May 11, 2023 Time: 8:15am

ORDER DENYING CLA PROPERTIES, LLC'S MOTION TO APPROVE PAYMENT OF FEES AWARD IN FULL AND FOR ORDER PRESERVING APPEAL RIGHTS AS TO THE FEES AND RIGHT TO RETURN IF APPEAL IS SUCCESSFUL

THIS MATTER having come before the Court on CLA PROPERTIES, LLC's ("***CLA***") MOTION TO APPROVE PAYMENT OF FEES AWARD IN FULL AND FOR ORDER PRESERVING APPEAL RIGHTS AS TO THE FEES AND RIGHT TO RETURN IF APPEAL IS SUCCESSFUL ON ORDER SHORTENING TIME [Doc ID# 58]; CLA having appeared through its attorneys of record, KENNEDY & COUVILLIER; SHAWN BIDSAL ("***Bidsal***") having filed an Opposition thereto [Doc ID# 61] and having appeared by and through his attorneys of record, SMITH & SHAPIRO, PLLC; the Court having reviewed the papers and pleadings on file herein and having entertained arguments of counsel, the Court being fully advised in the premises, and good cause appearing:

\ \ \

\ \ \

SMITH & SHAPIRO, PLLC
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Henderson, NV 89074
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The Court finds that CLA's Motion seeks an impermissible advisory opinion as the payment in question has not been made and as CLA is asking this Court to determine how an appellate court will treat the hypothetical payment, and the Motion should also be denied because the Motion fails to identify a legal basis on which the requested relief could be granted. Applebaum v. Applebaum, 97 Nev. 11, 621 P.2d 1110 (Nev. 1981).

NOW THEREFORE:

IT IS HEREBY ORDERED that CLA's Motion is DENIED.

Dated this 24th day of May, 2023

0AD E4D 7D5F 4C45
Joanna S. Kishner
District Court Judge

Prepared and Submitted by:

SMITH & SHAPIRO, PLLC

/s/ James E. Shapiro
James E. Shapiro, Esq.
Nevada Bar No. 7907
3333 E. Serene Ave., Suite 130
Henderson, Nevada 89074
Attorneys for SHAWN BIDSAL

Approved as to form:

KENNEDY & COUVILLIER

/s/ Todd E. Kennedy
Todd E. Kennedy, Esq.
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Attorneys for CLA PROPERTIES, LLC

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James E. Shapiro

From: Todd E. Kennedy <tkennedy@kclawnv.com>
Sent: Tuesday, May 23, 2023 10:49 AM
To: James E. Shapiro
Subject: RE: CLA v. Bidsal - Proposed Order Denying Motion to Approve Payment

Jim, you have my consent to submit this order with my electronic signature.

-Todd

From: James E. Shapiro <JShapiro@smithshapiro.com>
Sent: Thursday, May 18, 2023 8:18 AM
To: Todd E. Kennedy <tkennedy@kclawnv.com>
Subject: RE: CLA v. Bidsal - Proposed Order Denying Motion to Approve Payment

Todd,

We're fine with most of your changes, but I did clean up some of the language. Attached are my proposed revisions to your last version. Please let me know if I have your permission to affix your e-signature and submit the same.

Sincerely,

James E. Shapiro, Esq.
jshapiro@SmithShapiro.com

SMITH & SHAPIRO
ATTORNEYS AT LAW
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Website smithshapiro.com

From: Todd E. Kennedy <tkennedy@kclawnv.com>
Sent: Tuesday, May 16, 2023 10:53 AM
To: James E. Shapiro <JShapiro@smithshapiro.com>
Subject: CLA v. Bidsal

On the CLA motion, attached please find a redline of our requested changes to that proposed order adding in from the transcript.

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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

CLA Properties, LLC, Petitioner(s) vs. Shawn Bidsal, Respondent(s)	CASE NO: A-22-854413-B DEPT. NO. Department 31

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order Denying was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 5/24/2023

James Shapiro	jshapiro@smithshapiro.com
Jennifer Bidwell	jbidwell@smithshapiro.com
Todd Kennedy	tkennedy@kclawnv.com
Aimee Cannon	acannon@smithshapiro.com
America Gomez-Oropeza	aoropeza@smithshapiro.com
Melanie Bruner	mbruner@rsnvlaw.com
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Electronically Filed
5/25/2023 9:48 AM
Steven D. Grierson
CLERK OF THE COURT

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3333 E. Serene Ave., Suite 130
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702-318-5033
Attorneys for SHAWN BIDSAL

DISTRICT COURT

CLARK COUNTY, NEVADA

CLA, PROPERTIES, LLC, a California limited liability company, Movant (Respondent in arbitration), vs. SHAWN BIDSAL, an individual, Respondent (Claimant in arbitration).	Case No. A-22-854413-B Dept. No. 31

NOTICE OF ENTRY OF ORDER REGARDING BIDSAL'S MOTION TO REDUCE AWARD TO JUDGMENT AND FOR AN AWARD FOR ATTORNEY FEES AND COSTS AND JUDGMENT

PLEASE TAKE NOTICE that an ORDER REGARDING BIDSAL'S MOTION TO REDUCE AWARD TO JUDGMENT AND FOR AN AWARD FOR ATTORNEY FEES AND COSTS AND JUDGMENT was entered on the 24th day of May, 2023, a copy of which is attached hereto.

Dated this 25th day of May, 2023.

SMITH & SHAPIRO, PLLC

/s/ James E. Shapiro
James E. Shapiro, Esq.
Nevada Bar No. 7907
Aimee M. Cannon, Esq.
Nevada Bar No. 11780
3333 E. Serene Ave., Suite 130
Henderson, Nevada 89074
Attorneys for Respondent Shawn Bidsal

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O:(702)318-5033 F:(702)318-5034

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 25th day of May, 2023, I served a true and correct copy of the forgoing **NOTICE OF ENTRY OF ORDER REGARDING BIDSAL'S MOTION TO REDUCE AWARD TO JUDGMENT AND FOR AN AWARD FOR ATTORNEY FEES AND COSTS AND JUDGMENT**, by e-serving a copy on all parties registered and listed as Service Recipients in Odyssey, the Court's on-line, electronic filing website.

/s/ *Jennifer A. Bidwell*
An employee of SMITH & SHAPIRO, PLLC

SMITH & SHAPIRO, PLLC
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Electronically Filed
05/24/2023 2:19 PM
CLERK OF THE COURT

ORDR
TODD E. KENNEDY, ESQ.
Nevada Bar No. 6014
KENNEDY & COUVILLIER
3271 E. Warm Springs Rd.
Las Vegas, Nevada 89120
702-605-3440
Tkennedy@kclawnv.com

Attorneys for Movant CLA Properties, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

CLA Properties, LLC, a California limited Liability company, Movant (Respondent in Arbitration) v. SHAWN BIDSAL, an individual Respondent (Claimant in Arbitration).	Case No: A-22-854413-B Dept.: 31 Date: May 9, 2023 Time: 8:30 a.m.

ORDER REGARDING BIDSAL'S MOTION TO REDUCE AWARD TO JUDGMENT AND FOR AN AWARD FOR ATTORNEY FEES AND COSTS

and

JUDGMENT

THIS MATTER having come before the Court on SHAWN BIDSAL's ("***Bidsal***") MOTION TO REDUCE AWARD TO JUDGMENT AND FOR AN AWARD FOR ATTORNEY FEES AND COSTS (the "***Motion***"); Bidsal having appeared by and through his attorneys of record, SMITH & SHAPIRO, PLLC, CLA PROPERTIES, LLC's ("***CLA***") having appeared through its attorneys of record, KENNEDY & COUVILLIER, the Court having reviewed the papers and pleadings on file herein and having entertained arguments of counsel, the Court being fully advised in the premises, and good cause appearing:

\ \ \

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1. On March 20, 2023, the Court entered its Order Granting Bidsal's Countermotion to Confirm Arbitration Award and Denying CLA Properties, LLC's Motion to Vacate Arbitration Award, wherein the Court confirmed the Final Award issued on March 12, 2022, in JAMS Ref. No. 1260005736 (the "***Final Award***"). *See* Doc ID# 47.

2. On April 4, 2023, Bidsal filed his Motion, wherein he sought to reduce the Final Award to Judgment, for an award of interest from the date of the Final Award forward, and for an award of attorneys' fees.

3. With respect to the entry of judgment, the Court finds that while CLA argued that the Final Award was an enforceable order and therefore reducing it to a judgment was unnecessary, it is appropriate to reduce the award of attorneys' fees as provided in the now confirmed Final Award to Judgment.

4. With respect to the Motion's request that the Court award interest from the date of the Final Award, the Court finds that while it was not requested by Bidsal as part of the confirmation process there is nothing in the FAA or Nevada law that requires that he do so and his failure to do so was not a waiver. The Court has discretion to award interest to the date of the Award under *Mausbach v.* Lemke, 110 Nev. 37, 866 P.2d 1146 (1994) and the Court finds it appropriate to award interest at the legal rate[1] of interest from March 23, 2022 (the date the Final Award was served on the parties) forward, until paid in full.

5. As for the request for attorneys' fees post arbitration, CLA argued that in the prior district court proceedings involving the same parties and a first arbitration (Case No. A-19-795188-P) regarding the underlying membership interest transaction where CLA was the prevailing party, Bidsal successfully argued to this court and then the Nevada Supreme Court that the question of attorneys' fees was controlled by the Federal Arbitration Act ("FAA"), not the Nevada arbitration act, and that either under law of the case or judicial preclusion, the issue is decided, and Bidsal's request for attorneys' fees must be denied just as CLA's was denied in

[1] *See* NRS 17.130(2), 99.040(1), and Kerala Properties, Inc. v. Familian, 137 P.3d 1146, 122 Nev. 601 (Nev. 2006).

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Case No. A-19-795188-P. At oral argument, counsel for CLA also argued issue preclusion under *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 194 P.3d 709 (2008).

6. The Court as an initial matter finds that issue preclusion does apply to the question of post-arbitration attorneys' fees. This Court found in A-19-795188-P that the FAA governs this issue and there is no basis under the FAA to award CLA fees and costs for post arbitration proceedings, and the Nevada Supreme Court agreed. In that Supreme Court Order in footnote 1 but also in the body of the Order at page 4, that—as was argued to this Court in that proceeding--the FAA controls and that the mere reference of NRS Ch 38 was establishing venue and jurisdictionally appropriate to review the proceeding in the Eighth Judicial District. Until these proceedings, that was never contested.

7. NRS Ch. 38, what the provisions cited by CLA and Bidsal in the confirmation proceedings say, is to provide a place of venue. Hence, the mere mention, in a caption, of a NRS Ch. 38 provision to show that venue or jurisdiction here is proper does not transform a matter governed by the FAA into something else, as argued now by Bidsal. Indeed, looking back and the papers filed in this proceeding, both sides agree with a long history of what already had existed. They went back to Haberfeld, went back to Wall, referred to this Court's order in the A-19-795188-P matter, and neither side suggested during the confirmation process that this matter and this arbitration was different from the prior one. But now, Bidsal is seeking something different than what the Supreme Court already had said what was the scope of the agreement of the parties was: the FAA.

8. The Court does not view merely mentioning NRS Ch. 38 for venue purposes in an initiating pleading, even if put into subsequent pleadings in this case, changes what the Supreme Court has already said, which is neither the Operating Agreement or other aspects would be decided by Nevada arbitration statutes. Rather, they would be decided under the FAA, as agreed to by all parties . While the Court can appreciate the distinction between the substantive law and the attorneys' fees component being asserted under NRS 38.243, the Court doesn't see there to be a meaningful distinction because the Nevada Supreme Court's Order resolves the question

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in both contexts. It addresses the substantive as well as the attorneys' fees component, the Supreme Court rejected relying on NRS 38.243 for the question of attorneys' fees.

9. Independent of issue preclusion, this Court must take the whole totality of what was the circumstances, when this matter was filed, how it was filed and articulated and ultimately must go back to what actually was the scope of this case. Consistent with what this Court ruled in the A-19-795188-P matter, consistent with the Supreme Court's Order in that matter, which analysis applies equally to this matter, the Court does not find that it would be appropriate to award attorneys' fees, because it finds that this is governed by the FAA, which does not allow for further awards of fees in post arbitration judicial proceedings. The Court does not find that the mere mention of the NRS or the way that it was mentioned to establish the jurisdiction of the Court to hear it, as was as how it was cited in the pleadings from both parties, CLA and Bidsal, prior to the instant motion changes that, and therefore, the FAA governs the question of attorneys' fees and therefore the Court declines to award them under the circumstances of this matter.

NOW THEREFORE:

IT IS HEREBY ORDERED that Bidsal's Motion is GRANTED in part and DENIED in part, as more fully set forth herein.

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Ph. (702) 605-3440 FAX: (702) 625-6367
www.kclawnv.com

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that JUDGMENT is hereby entered, in favor of SHAWN BIDSAL and against CLA, PROPERTIES, LLC, a California limited liability company, in the amount of FOUR HUNDRED FIFTY-FIVE THOUSAND SIX HUNDRED FORTY-FOUR and 84/100s DOLLARS ($455,644.84), plus interest from March 23, 2022, at the legal rate of interest[1], until paid in full.

Dated this 24th day of May, 2023

91A 523 3035 BC47
Joanna S. Kishner
District Court Judge

Prepared and Submitted by:

KENNEDY & COUVILLIER

/s/ Todd E. Kennedy
Todd E. Kennedy, Esq.
Nevada Bar No. 6014
3271 E. Warm Springs Rd.
Las Vegas, Nevada 89120
(702) 605-3440
Attorneys for CLA PROPERTIES, LLC

Approved as to Form:

SMITH & SHAPIRO, PLLC

COMPETING ORDER
James E. Shapiro, Esq.
Nevada Bar No. 7907
3333 E. Serene Ave., Suite 130
Henderson, Nevada 89074
Attorneys for SHAWN BIDSAL

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www.kclawnv.com

Todd E. Kennedy

From: James E. Shapiro <JShapiro@smithshapiro.com>
Sent: Monday, May 22, 2023 2:05 PM
To: Todd E. Kennedy
Subject: RE: CLA v. Bidsal - Proposed Judgment

We attempted to accommodate your request and added additional language. It was not everything you wanted, but I believe what we added encapsulates everything you wanted to put in… just in less words. In any event, it appears we are at an impasse, and we will submit our proposed order without your signature.

Please let me know on the other order.

Sincerely,

James E. Shapiro, Esq.
jshapiro@SmithShapiro.com

SMITH & SHAPIRO
ATTORNEYS AT LAW
Main 3333 E. Serene Ave., Suite 130, Henderson, NV 89074
Office 702.318.5033 Fax 702.318.5034
Website smithshapiro.com

From: Todd E. Kennedy <tkennedy@kclawnv.com>
Sent: Friday, May 19, 2023 2:04 PM
To: James E. Shapiro <JShapiro@smithshapiro.com>
Subject: RE: CLA v. Bidsal - Proposed Judgment

As I articulated before, we are unable to understand why the same issue merited a lengthy discussion and order as to the attorneys fees question, but you feel it can be handled in one sentence in this order. Our proposed changes come directly from the Court's discussion of her decision providing the rational, and we believe she expects to see that discussion.

On that order, we respectfully believe that the more detailed discussion we provided is appropriate and necessary, and is what the Court is expecting in the proposed order.

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While we did incorporate some of your proposed changes, most of them are not appropriate or warranted under these circumstances. Attached is (v3) of the proposed Judgment. Please let me know if I have your permission to affix your e-signature and submit the same.

Sincerely,

James E. Shapiro, Esq.
jshapiro@SmithShapiro.com

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--Todd

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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

CLA Properties, LLC, Petitioner(s) vs. Shawn Bidsal, Respondent(s)	CASE NO: A-22-854413-B DEPT. NO. Department 31

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 5/24/2023

James Shapiro	jshapiro@smithshapiro.com
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6/20/2023 11:17 AM
Steven D. Grierson
CLERK OF THE COURT

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TODD E. KENNEDY, ESQ.
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Attorneys for Movant CLA Properties, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

CLA Properties, LLC, a California limited Liability company, Movant (Respondent in Arbitration) v. SHAWN BIDSAL, an individual Respondent (Claimant in Arbitration).	Case No: A-22-854413-B Dept.: 31 **SUPPLEMENTAL NOTICE OF APPEAL**

PLEASE TAKE NOTICE that CLA Properties, LLC, movant below, appeals to the Supreme Court of Nevada from the Order and Judgment entered by the Honorable Joanna S. Kishner, District Court Judge, on May 24, 2023. A copy of the Order and Judgment appealed from is attached as Exhibit 1. The District Court's order of March 20, 2023, confirming the arbitration award and denying a motion to vacate the award, is already pending in the Nevada Supreme Court as Docket No. 86438.

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Attorneys for Movant CLA Properties, LLC

CERTIFICATE OF SERVICE

I certify that I caused to be served the above Notice of Appeal on all counsel of record who have appeared in this matter using the Court's electronic filing and service facility June 20, 2023.

/s/ Todd E. Kennedy
An employee of Kennedy & Couvillier

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Steven D. Grierson
CLERK OF THE COURT

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Attorneys for Movant CLA Properties, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

CLA Properties, LLC, a California limited Liability company, Movant (Respondent in Arbitration) v. SHAWN BIDSAL, an individual Respondent (Claimant in Arbitration).	Case No: A-22-854413-B Dept.: 31 **ERRATA TO SUPPLEMENTAL NOTICE OF APPEAL**

CLA Properties, LLC, submits this Errata to its Supplemental Notice of Appeal filed on June 20, 2023. The Supplemental Notice identified the Order/Judgment appealed from but inadvertently omitted the attachment. The Supplemental Notice of Appeal with its attachment is attached to this Errata.

KENNEDY & COUVILLIER, PLLC

/s/ Todd E. Kennedy, Esq.
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DISTRICT COURT

CLARK COUNTY, NEVADA

CLA Properties, LLC, a California limited Liability company, Movant (Respondent in Arbitration) v. SHAWN BIDSAL, an individual Respondent (Claimant in Arbitration).	Case No: A-22-854413-B Dept.: 31 **SUPPLEMENTAL NOTICE OF APPEAL**

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Attorneys for Movant CLA Properties, LLC

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/s/ Todd E. Kennedy
An employee of Kennedy & Couvillier

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5/25/2023 9:48 AM
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702-318-5033
Attorneys for SHAWN BIDSAL

DISTRICT COURT

CLARK COUNTY, NEVADA

CLA, PROPERTIES, LLC, a California limited liability company, Movant (Respondent in arbitration), vs. SHAWN BIDSAL, an individual, Respondent (Claimant in arbitration).	Case No. A-22-854413-B Dept. No. 31

NOTICE OF ENTRY OF ORDER REGARDING BIDSAL'S MOTION TO REDUCE AWARD TO JUDGMENT AND FOR AN AWARD FOR ATTORNEY FEES AND COSTS AND JUDGMENT

PLEASE TAKE NOTICE that an ORDER REGARDING BIDSAL'S MOTION TO REDUCE AWARD TO JUDGMENT AND FOR AN AWARD FOR ATTORNEY FEES AND COSTS AND JUDGMENT was entered on the 24th day of May, 2023, a copy of which is attached hereto.

Dated this 25th day of May, 2023.

SMITH & SHAPIRO, PLLC

/s/ James E. Shapiro
James E. Shapiro, Esq.
Nevada Bar No. 7907
Aimee M. Cannon, Esq.
Nevada Bar No. 11780
3333 E. Serene Ave., Suite 130
Henderson, Nevada 89074
Attorneys for Respondent Shawn Bidsal

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 25th day of May, 2023, I served a true and correct copy of the forgoing **NOTICE OF ENTRY OF ORDER REGARDING BIDSAL'S MOTION TO REDUCE AWARD TO JUDGMENT AND FOR AN AWARD FOR ATTORNEY FEES AND COSTS AND JUDGMENT**, by e-serving a copy on all parties registered and listed as Service Recipients in Odyssey, the Court's on-line, electronic filing website.

/s/ *Jennifer A. Bidwell*
An employee of SMITH & SHAPIRO, PLLC

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

Electronically Filed
05/24/2023 2:19 PM
CLERK OF THE COURT

ORDR
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Nevada Bar No. 6014
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3271 E. Warm Springs Rd.
Las Vegas, Nevada 89120
702-605-3440
Tkennedy@kclawnv.com

Attorneys for Movant CLA Properties, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

CLA Properties, LLC, a California limited Liability company, Movant (Respondent in Arbitration) v. SHAWN BIDSAL, an individual Respondent (Claimant in Arbitration).	Case No: A-22-854413-B Dept.: 31 Date: May 9, 2023 Time: 8:30 a.m.

ORDER REGARDING BIDSAL'S MOTION TO REDUCE AWARD TO JUDGMENT AND FOR AN AWARD FOR ATTORNEY FEES AND COSTS

and

JUDGMENT

THIS MATTER having come before the Court on SHAWN BIDSAL's ("***Bidsal***") MOTION TO REDUCE AWARD TO JUDGMENT AND FOR AN AWARD FOR ATTORNEY FEES AND COSTS (the "***Motion***"); Bidsal having appeared by and through his attorneys of record, SMITH & SHAPIRO, PLLC, CLA PROPERTIES, LLC's ("***CLA***") having appeared through its attorneys of record, KENNEDY & COUVILLIER, the Court having reviewed the papers and pleadings on file herein and having entertained arguments of counsel, the Court being fully advised in the premises, and good cause appearing:

\ \ \

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1. On March 20, 2023, the Court entered its Order Granting Bidsal's Countermotion to Confirm Arbitration Award and Denying CLA Properties, LLC's Motion to Vacate Arbitration Award, wherein the Court confirmed the Final Award issued on March 12, 2022, in JAMS Ref. No. 1260005736 (the "***Final Award***"). *See* Doc ID# 47.

2. On April 4, 2023, Bidsal filed his Motion, wherein he sought to reduce the Final Award to Judgment, for an award of interest from the date of the Final Award forward, and for an award of attorneys' fees.

3. With respect to the entry of judgment, the Court finds that while CLA argued that the Final Award was an enforceable order and therefore reducing it to a judgment was unnecessary, it is appropriate to reduce the award of attorneys' fees as provided in the now confirmed Final Award to Judgment.

4. With respect to the Motion's request that the Court award interest from the date of the Final Award, the Court finds that while it was not requested by Bidsal as part of the confirmation process there is nothing in the FAA or Nevada law that requires that he do so and his failure to do so was not a waiver. The Court has discretion to award interest to the date of the Award under *Mausbach v.* Lemke, 110 Nev. 37, 866 P.2d 1146 (1994) and the Court finds it appropriate to award interest at the legal rate[1] of interest from March 23, 2022 (the date the Final Award was served on the parties) forward, until paid in full.

5. As for the request for attorneys' fees post arbitration, CLA argued that in the prior district court proceedings involving the same parties and a first arbitration (Case No. A-19-795188-P) regarding the underlying membership interest transaction where CLA was the prevailing party, Bidsal successfully argued to this court and then the Nevada Supreme Court that the question of attorneys' fees was controlled by the Federal Arbitration Act ("FAA"), not the Nevada arbitration act, and that either under law of the case or judicial preclusion, the issue is decided, and Bidsal's request for attorneys' fees must be denied just as CLA's was denied in

[1] *See* NRS 17.130(2), 99.040(1), and Kerala Properties, Inc. v. Familian, 137 P.3d 1146, 122 Nev. 601 (Nev. 2006).

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Case No. A-19-795188-P. At oral argument, counsel for CLA also argued issue preclusion under *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 194 P.3d 709 (2008).

6. The Court as an initial matter finds that issue preclusion does apply to the question of post-arbitration attorneys' fees. This Court found in A-19-795188-P that the FAA governs this issue and there is no basis under the FAA to award CLA fees and costs for post arbitration proceedings, and the Nevada Supreme Court agreed. In that Supreme Court Order in footnote 1 but also in the body of the Order at page 4, that—as was argued to this Court in that proceeding--the FAA controls and that the mere reference of NRS Ch 38 was establishing venue and jurisdictionally appropriate to review the proceeding in the Eighth Judicial District. Until these proceedings, that was never contested.

7. NRS Ch. 38, what the provisions cited by CLA and Bidsal in the confirmation proceedings say, is to provide a place of venue. Hence, the mere mention, in a caption, of a NRS Ch. 38 provision to show that venue or jurisdiction here is proper does not transform a matter governed by the FAA into something else, as argued now by Bidsal. Indeed, looking back and the papers filed in this proceeding, both sides agree with a long history of what already had existed. They went back to Haberfeld, went back to Wall, referred to this Court's order in the A-19-795188-P matter, and neither side suggested during the confirmation process that this matter and this arbitration was different from the prior one. But now, Bidsal is seeking something different than what the Supreme Court already had said what was the scope of the agreement of the parties was: the FAA.

8. The Court does not view merely mentioning NRS Ch. 38 for venue purposes in an initiating pleading, even if put into subsequent pleadings in this case, changes what the Supreme Court has already said, which is neither the Operating Agreement or other aspects would be decided by Nevada arbitration statutes. Rather, they would be decided under the FAA, as agreed to by all parties . While the Court can appreciate the distinction between the substantive law and the attorneys' fees component being asserted under NRS 38.243, the Court doesn't see there to be a meaningful distinction because the Nevada Supreme Court's Order resolves the question

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in both contexts. It addresses the substantive as well as the attorneys' fees component, the Supreme Court rejected relying on NRS 38.243 for the question of attorneys' fees.

9. Independent of issue preclusion, this Court must take the whole totality of what was the circumstances, when this matter was filed, how it was filed and articulated and ultimately must go back to what actually was the scope of this case. Consistent with what this Court ruled in the A-19-795188-P matter, consistent with the Supreme Court's Order in that matter, which analysis applies equally to this matter, the Court does not find that it would be appropriate to award attorneys' fees, because it finds that this is governed by the FAA, which does not allow for further awards of fees in post arbitration judicial proceedings. The Court does not find that the mere mention of the NRS or the way that it was mentioned to establish the jurisdiction of the Court to hear it, as was as how it was cited in the pleadings from both parties, CLA and Bidsal, prior to the instant motion changes that, and therefore, the FAA governs the question of attorneys' fees and therefore the Court declines to award them under the circumstances of this matter.

NOW THEREFORE:

IT IS HEREBY ORDERED that Bidsal's Motion is GRANTED in part and DENIED in part, as more fully set forth herein.

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IT IS FURTHER ORDERED, ADJUDGED, and DECREED that JUDGMENT is hereby entered, in favor of SHAWN BIDSAL and against CLA, PROPERTIES, LLC, a California limited liability company, in the amount of FOUR HUNDRED FIFTY-FIVE THOUSAND SIX HUNDRED FORTY-FOUR and 84/100s DOLLARS ($455,644.84), plus interest from March 23, 2022, at the legal rate of interest[1], until paid in full.

Dated this 24th day of May, 2023

91A 523 3035 BC47
Joanna S. Kishner
District Court Judge

Prepared and Submitted by:

KENNEDY & COUVILLIER

/s/ Todd E. Kennedy
Todd E. Kennedy, Esq.
Nevada Bar No. 6014
3271 E. Warm Springs Rd.
Las Vegas, Nevada 89120
(702) 605-3440
Attorneys for CLA PROPERTIES, LLC

Approved as to Form:

SMITH & SHAPIRO, PLLC

COMPETING ORDER
James E. Shapiro, Esq.
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Attorneys for SHAWN BIDSAL

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Todd E. Kennedy

From: James E. Shapiro <JShapiro@smithshapiro.com>
Sent: Monday, May 22, 2023 2:05 PM
To: Todd E. Kennedy
Subject: RE: CLA v. Bidsal - Proposed Judgment

We attempted to accommodate your request and added additional language. It was not everything you wanted, but I believe what we added encapsulates everything you wanted to put in… just in less words. In any event, it appears we are at an impasse, and we will submit our proposed order without your signature.

Please let me know on the other order.

Sincerely,

James E. Shapiro, Esq.
jshapiro@SmithShapiro.com

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